2519 DR. JOHN H. FLYNN was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Dr. John H. Flynn? A. Yes.

Q. And, Doctor, where do you live? A. St. Helens, Oregon.

Q. How long have you lived there? A. Oh, I don't recollect—it's been 44 years in the county. That is Scappoose and St. Helens.

Q. And you are practicing medicine there? A. Yes.

Q. And how long have you been a practicing physician? A. Since March 10th, 1897.

Q. 1897. That makes it almost 53 years? A. Yes.

Q. And did you practice in that county all that time? A. Oh, no. I practiced in Missouri, Illinois, Kansas.

Q. And how long have you been in St. Helens,—Columbia County, we will put it? A. I came there on the 1st day of January, 1907.

Q. And part of the time you were in other towns in that county? A. Scappoose.

2520 Q. How long have you been in St. Helens? A. Well, 35 years, I guess about that. I don't recollect just the time.

Q. Tell me, are there any other doctors besides yourself that were there in the '30s that are still practicing in St. Helens now? A. Yes.

Q. Who? A. Dr. James Wooden of Clatskanie.

Q. I mean any doctors in St. Helens that were practicing there in the '30s, not Clatskanie. A. Oh, no.

Q. You are the only one that has stuck it out, eh? Now, Doctor, are you a member of any medical societies? A. I am.

Q. What societies? A. The Columbia County Medical Society and the Oregon State.

Q. How long have you been a member of those societies? A. Oh, I don't recollect the year that we organized the medical society in Columbia County. Before that I was a member of the Multnomah County Society, but I think it was along about '23 or something like that.

Q. And before that you were a member of the Multnomah County Medical Society? A. Yes.

2521 Q. That is, it extended into Columbia County? A. No. Columbia County was not organized.

Q. Oh, that is it. And then you were a member of the Multnomah County Medical Society, and when did you first become a member of that, do you remember, except that it was a long time ago? A. Yes. It was 40 years ago.

Q. And this membership in one or the other society has been continuous during that period? A. Yes. I am a life member now.

Q. Of the County and State Societies. Now, have you ever been an officer of either the Columbia County or the State Medical Society? A: Oh, I have been delegate to the State Society on and off, but I have been President and Vice-President of the Columbia County for quite frequently, in fact most of the time. The records would have to show that. I don't remember. It was so often I have forgotten.

Q. Now, while you have been practicing medicine in Columbia County have you ever taken care of any patients who have been subscribers or members of any commercial hospital associations? A. For a short time I did.

Mr. Marcus: I would like to make the customary objection, your Honor, to this line of testimony on the same grounds as made with respect to Dr. Durno.

The Court: It will be admitted subject to the objection.

2522 Mr. Jaureguy:

Q. You can answer. A. I didn't get it.

Q. Whether while you have been practicing medicine in St. Helens you have taken care of patients who have been subscribers or members of commercial hospital associations. A. For a short time I did, the National.

Q. The National. Well, when was that short time? A. Oh, along about '29, '30 and '31, along in there.

Q. Well, did they go down and make arrangements with doctors then or did they have an open panel system? A. No. It was a closed panel, and the reason I went into it was to force it open.

Q. Force it open? A. So that there would be no discrimination.

Q. That is to make an open panel out of it? A. Yes.

Q. Well, what luck did you have? A. It worked for a little while only.

Mr. Jaureguy: I have here some exhibits I would like to have marked.

(Sheaf of correspondence, the first letter of which is by National Hospital Association to Dr. J. H. Flynn, dated July 27, 1931, was thereupon marked for identification Defendants' Exhibit No. 2765.)

Mr. Jaureguy:

Q. Well, what about now? Is the open panel or
2523 closed panel system in vogue down there? A. Why, it is open. However, I don't take any tickets.

Q. What about doctors generally in Columbia County, do they take tickets? A. I have no knowledge of anyone that does not except myself.

Q. Who is the President now? A. Dr. Kenney of Rainier.

Q. And what about him? A. He takes them. He takes anything that comes.

Q. Anything that comes? A. Yes.

Q. What about over in Vernonia? A. They take anything and always have.

Q. Always have. What about Clatskanie? A. Clatskanie always has taken any tickets that come.

Q. Well, Rainier, have they always taken them too? A. Yes.

Mr. Marcus: Well, your Honor, I want to object to all this unless the Doctor is told to confine himself to what he knows of his own knowledge.

Mr. Jaureguy:

Q. Now, do you know that? A. I didn't get that.

Q. He says for you not to answer unless you know. Do you know that? A. I know what I am talking about.

2524 Q. You understand you are not to tell us things you don't know about here? A. I will tell you I don't know.

Q. Yes. Now, can you tell us the experiences you had when you were working for the National Hospital Association? A. I was working for—I found myself working for the National Hospital Association and not for my patients, which I did not like and I could not tolerate it longer. I had to get permission to do anything that I did. I was dictated to as to whether I should treat a patient or send it to Portland or send it to someone else, and I never worked that way before and it was very obnoxious to me. However, I did not attempt to dictate to any other members of our society. Our society was an educational and social organization organized for that purpose.

Q. Well, you say that you didn't attempt to dictate to any of the other members of your society. Did the other members of the society try to dictate to you? A. No, sir.

Q. Now, you say that you would have to get permission as to how you were going to treat your own patients. A. My own patients would come to me and he would either pay me nothing or pay double for his services. If he paid National or the Hospital Association and then paid me, why, he would be paying double, and if he wanted to come to me he had to do that because the hospital asso-
2525 ciation would—they had a closed panel most of the time and would not pay me.

Q. Then, I notice here as part of Exhibit 2765 a letter to you telling you who their doctors were down there and you should comply with the request that all work should be referred to them, and then they add, "We would respectfully ask you comply with this request. We will decline to assume payments for any future services rendered on our account." A. Yes. Dr. Wade, Dr. Ross, Dr. Edward Ross, were the staff.

Q. Well, when you were on that closed panel did you make a lot of money taking care of their patients? A. On the closed panel?

Q. When you were on the panel during that time? A. That was an open panel when I was on it. I wouldn't work on the closed panel.

Q. I thought you went on the closed panel in '29 or '30 in order to open it up. A. I went in on agreement they would open it.

Q. And how were the fees? A. The fees—most of the fees were $1 and I found that I couldn't buy sufficient supplies to take care of the case for $1, letting alone getting anything out of it myself.

Q. Well, now, here is one, also a part of this same exhibit of 2765, dated April 20th, 1931 to you from National Hospital Association:

"Dear Doctor: Enclosed you will find our check
2526 in the amount of $42.01 covering services rendered (name of patient) who suffered a compressed fracture of the radius and dislocation of the wrist on November 6th last.

"We are reducing your bill in this case to conform to the schedule of fees of the State Industrial Accident Commission, less one-third in accordance with our allowance to your district. Your bill now reads $35 for the fracture

and 50 per cent of the Commission's allowance for the dislocation, in accordance with the State's regulations, less the discount, and the balance due is $28.34."

Was that regular practice with you when a man was under Industrial Accident? A. I am a little foggy on that period, but I think they had an agreement, some agreement with the State Accident Compensation Commission, that they took care of the cases and collected from them.

Q. And then they would allow you the Industrial Accident fee less one-third? A. Less one-third.

Q. And then I see 50 per cent of the Commission's allowance for the dislocation in accordance with the State's regulations, so they gave you $35 for the fracture and 50 per cent of the Commission's regular fee schedule for the dislocation, and then they took a third off all of that.

Is that the way you got it, or did you figure that
2527 out? A. I would like to look at that again.

Well, I don't remember much about this, but they say they will reduce it to conform with the fee of the Industrial Accident, but practically all my bills were reduced anyway, so that wasn't unusual, whether it was State Industrial Accident or not.

Q. These dollar bills weren't reduced, were they? A. Well, they couldn't reduce them much. Very seldom I sent in a bill for a dollar.

The Court: What part of Missouri did you come from, Doctor? You didn't come from Independence?

A. St. Joe.

The Court: St. Joe. That is pretty close.

2528 Q. In your Medical Society have you ever kept anybody out of the Society because they took tickets or worked for hospital associations? A. We never kept them out, whether they did or not. We took them in.

Q. Took them all in? A. Yes; never barred anybody.

Q. That is still true? A. Yes.

Q. That practice is still true? That is what you still do down there? A. Yes, sir. Every doctor in Columbia County is a member of the Society except two who are practically the same as members. They have not completed their period of probationary membership, which gives them full membership with the exception of a vote.

Q. Is that a six-months period? Is that correct? A. Yes, a six-months period.

Q. Then, at the end of six months— A. Then they automatically, unless there is some objection, will become full members.

Q. What you have just been telling us about all of them being members, does that include the doctors in Vernonia and Clatskanie and the other places? A. They are all members of the Society; have been always since they came.

2529 Q. In Vernonia, if you know, and only if you know, do the doctors take tickets? A. They have to; those cases drift around, you know, for treatment, but I think over there it has been largely Industrial.

Q. The Industrial Hospital Association? A. Yes.

Q. Over in Vernonia were the doctors on salary or how were they, if you know? A. I don't know.

Q. You don't know? A. I don't know.

Q. But they have almost entirely hospital association work over there? I mean, a very large number of them, of the men in Vernonia, are members of the hospital association? A. Yes, and there are two doctors there and they take everything that comes.

Q. In those days what about prescriptions? Could you write whatever prescriptions you wanted for a patient? A. Well, that was one of the conditions that I took exception to with the work. They were paying 35 cents, I believe it was, as a maximum for a prescription and I claimed I could not prescribe what I wished often for 35 cents or what the druggist would put up for 35 cents. He wouldn't put up a 35-cent prescription. I demanded that they raise that to 50 cents and make it an open panel.

2530 That is the reason I took their tickets, not that I wanted them; but I took them because I wanted it open, and I wanted to be permitted to prescribe what I thought best.

Q. Were you able to finally persuade the National that they should? A. Yes, they did that.

Q. Raised their allowance from 35 to 50 cents per prescription? A. To 50.

Q. It was 35 cents. A. Now, listen,—

Q. Yes. A. Please. I am not sure of those exact figures but they did raise them.

Q. That 35 cents, was that your fee for you to write these prescriptions? A. No, that was all they would pay the druggist for one prescription. We all know that a druggist cannot fill all prescriptions for 35 cents.

Q. What did you do in cases where the patient needed

something that cost more than 35 cents? A. I prescribed, I believe, what I thought best and let the patient look out for himself.

Mr. Jaureguy: Take the witness.

2531 Cross Examination

By Mr. Marcus:

Q. Doctor, in honor of your years, I am going to ask you but few questions. A. Well, Attorney, please, I don't hear very well.

Q. I said, Doctor, that in honor of your years I was going to ask you just a few questions. Are you still practicing? A. Yes. I am the County Health Officer and do some practice.

Q. Doctor, I think you said in response to one of Mr. Jaureguy's questions that you were not certain as to what amount was allowed on those prescriptions. You don't remember? A. We are not allowed anything on the prescriptions, but the druggist—they would only pay a maximum of 35 cents, and of course we could not prescribe what we wished for that price, limited to paying that.

Q. I had understood at one time, while you were being questioned, you were saying you were not sure as to this amount or these amounts, whether it was 35 or 50 cents or some other amount. Are you sure that it was 35 cents? A. I am practically sure of that. I know it was raised to 50 cents.

Q. Doctor, when you talked before about these other areas, near St. Helens, was that based upon what you had heard from somebody else, that someone else had told you these things and that is how you knew them? A.
2532 The doctors themselves. I circulate all over the county, you know, as Health Officer, and I get the information first-hand.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

2533 Dr. Jack Hartman was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Give us your name, please. A. Jack Hartman.

Q. Where do you live, Doctor? A. Sweet Home.

Q. What is your business or profession? A. M.D.

Q. How long have you followed the practice of medicine? A. Since June, 1940.

Q. Has it been in Sweet Home all the time? A. No.

Q. Where was it theretofore? A. U. S. Army until September 30, 1945. Then at Sudan, Minnesota, sixteen months.

Q. So you have been at Sweet Home how long? A. Since May 12, 1947.

Q. At what medical school did you get your education? A. University of Minnesota.

Q. Then did you have an internship? A. At Kansas City General Hospital in Kansas City, Missouri.

2534 Q. Then you went from there into the Army? A. Yes. I was a reserve officer.

Q. Are you a member of any medical society? A. Yes. I belong to several, the Linn County Medical Society, the State, the Oregon State Medical Society, and also I belong to societies in Minnesota, also the Royal Society of Physicians in England.

Q. The Royal Society of Physicians in England? A. Yes.

Q. Have you been an officer of either the State or County Medical Society? A. No, sir.

Mr. Jaureguy: I want to have this marked,

(Letter from National Hospital Association to Dr. Hartman thereupon marked Defendants' Exhibit 2766.)

Mr. Jaureguy: Counsel has called, and very properly so, my attention to some pen-and-ink writing on the bottom. Doctor, you don't have any objections if we tear that off, do you? A. No, I wrote that on for my own use.

Q. Doctor, during your practice at Sweet Home, have you taken care of patients who are subscribers or members of the commercial hospital associations?

Mr. Marcus: I would like to object to this line of questioning, your Honor, on the same grounds as made
2535 with respect to Dr. Durno.

The Court: Admitted, subject to the objection.

Mr. Jaureguy:

Q. Now you can answer the question? A. Pardon?

Q. Do you remember the question now? A. Yes, I take all the hospital associations' tickets.

Q. Those include what hospital associations? A. National Hospital Association, Industrial Hospital Association, Prudential Hospital Association, Oregon Physicians' Service.

Q. Has any medical society ever told you you should not do that? A. No, and I don't think I would agree if they did. You have to take them down there.

(Recess.)

Q. I think you have answered that no medical society has ever told you whether you should or should not take tickets? A. No, sir.

Q. That is, your answer is that no medical society has ever told you that you should not take tickets? A. No medical society has ever told me not to take any tickets.

Q. Have you had any difficulties or negotiations or conferences with the National Hospital Association with respect to the payment of your fees? A. I have had some difficulties, but it was not with respect to how much the fees should be. It was with respect to an average charge for my patients per year.

2536 Q. Tell us about it, will you? A. Last November National stopped paying its bills to me.

Q. That is, November, 1949, you mean? A. 1949. Let's go back to November, 1948. That was when I first ran into this. Up to that time they had been very nice. All of a sudden they stopped paying bills, they didn't say why, didn't write me any letters. I didn't say anything. I thought "a hard winter" or that maybe the dues were not coming in.

By February I was sort of getting in the hole a little bit. The men were coming in and I was still taking tickets and sending bills up there once a month, and nothing happened.

Finally a union man, a CIO man, came around and told me that one of the National Hospital Association representatives had been out to see somebody at the union and said that my charges were too much, and that the monthly bills were too much. They ran over a thousand dollars or something like that. I never kept track of them at that

time. I just had a man come in and I put it down, had a patient come in and put it down.

That gave me an inkling of it, so I called up Mr. Bechtold at Portland and suggested that we have a talk. I came up to Portland and we had a talk. The talk consisted of him saying "I won't pay your bill as it stands," but he will pay something that he thought was reasonable, and he showed me a chart of the doctors down there in my neighborhood—Lebanon—Sweet Home—showing how many office fees and so forth, and the cost per patient
2537 per year.

Q. The cost per patient per year? A. Yes. It ran between $8 and $12. My own was $12.

Q. Between $8 and $12? A. Between eight and twelve dollars per patient. Well, of course, that sort of puzzled me because I couldn't figure out how there could be an average charge.

The Court: Talk louder, please.

A. I couldn't figure out, I say, what he was driving at. He was driving at the idea that I was $4 over the lowest average there and why? Well, I didn't know why. I was just treating them. I needed the money—

Mr. Jaureguy:

Q. I want to get this straight here. The lowest average was $8. A. That means $8 per patient per year.

Q. $8 per patient per year that was treated, $8 per patient that was treated per year? A. Yes.

Q. Your average was $12 per treated patient per year? A. Yes. I had the most patients on that chart. It sort of flattered me, yet it probably doesn't mean anything. I did not feel like arguing the point with an insurance company, so I took his figure, although he cut me down a thousand or fifteen hundred and I decided that it really wasn't my fight. It should be the membership's fight, so I went
2538 back and talked to the men about it and they felt I was right. They were heartily satisfied with the kind of treatment—

Q. That is what men? A. The union, the A. F. of L.

Q. Some of them, were they patients of yours? A. Yes, patients. I had treated most of them, I guess. I went down there and talked to the union membership in the A. F. of L. and C. I. O. I have a lot of patients in those two organizations. I just told them what happened to me, that is all, and then I told them that if I was cut to

a certain percentage per year that the service would have to cut, too, but that I was willing to tell them in advance that I was going to cut their service. I do a lot of service for these hospital associations and it is impossible to put down a charge of $2.50 for every time I see a man. They see me very frequently; they just walk in and have their troubles. Here I thought I was giving them a break and they thought I was overcharging them on an average. I took the fees right out of their fee schedule book.

2539 Mr. Jaureguy:

Q. There was no complaint, as I understand, from the National that any particular treatment you gave that you charged them more than the fee schedule? A. No, no complaint on that nature, because I take them right out of the book, their fee schedule book. The complaint seemed to be the number of office calls the patients were making.

The Court: In other words, you saw the men too often?

A. Yes.

Mr. Jaureguy:

Q. Well, did you ever ask them to come in or did they come in because they thought they needed to come in? A. I told them to come in at regular intervals until they were cured. Some people take penicillin shots. You have to take them so often. When they are cured they are cured. Nobody likes to come up to a doctor's office just for fun.

The Court: I think I can agree to that.

A. Well, they don't like to really, and I don't like to force them to. My idea of practicing there was to admit as few to a hospital as possible because they all had to work and support their families and when the families got sick, if they weren't working they couldn't pay their doctor bills either, and the reason I developed a large practice down there was that they knew if they came to see me they wouldn't be hospitalized perhaps as often. I would treat them at their homes or while they were working even though they were pretty sick. That was another thing that astonished Mr. Bechtold, that I made house calls.

2540 Q. That you made house calls? A. I like to make house calls.

Q. They give you a cup of coffee or something? A. Well, it gets me out in the open.

The Court: How big a community is that now?

Mr. Jaureguy: It's grown a lot.

A. They brag now and say it is 8,000.

The Court: How many mills?

A. Well, there are some large ones like the Willamette National and Cascadia Lumber Company.

The Court: There are a lot?

A. Several, yes. There aren't as many as a few years ago.

Mr. Jaureguy:

Q. You say Sweet Home ha 8,000 now? A. Portland could not understand that, not even the banker.

The Court: That is where the bank robbers went.

A. Oh, I knew some of them.

Mr. Jaureguy:

Q. Knew some of the bank robbers? A. Yes. In the Army I was a psychiatrist, I was in that division, and over in England I had one of the prison wards, one of the violent wards.

Q. Well, now, from what you have told us, I get from what Mr. Bechtold told you that your charges, average charges, per patient per year of the patients that you treat are higher than the average of the other doctors in that county or that neighborhood. What would you say
2541 about the hospital charges of the patients? A. He didn't say anything about that, because I think I saved him a lot of money over there.

Q. That is by making your home calls and things of that type? A. That is right.

Q. Then this Exhibit 2766 written you by Mr. Page—I will just read it to you:

"Dr. J. Hartman, Sweet Home, Oregon.

"Dear Dr. Hartman: We enclose check covering your November, 1949 account which we regret to advise has been somewhat delayed. This delay, however, was occasioned by the fact that we hoped you might call at our office since in checking these bills and averaging them it is noted that the average charge per patient shows a considerable increase over the average charges for those

months subsequent to your last call at the Association's office.

"Very truly yours, National Hospital Association, W. J. Page, Manager, Claims Department."

Well, was that the same kind of a contention they made when you took that $1500 cut a few months before? A. They were starting to do that. I sent them a collection letter. That was the answer. I let six weeks go by and then I knew what was up. I figured they must do that every November. I sent the collection letter, I believe, in the first part of January or last part of December,
2542 but anyhow they usually pay once a month, and when I let the usual time plus some extra time elapse then I knew we were in for it again. I made copies of that letter and distributed it among the men.

The Court: What is he suggesting? The contract down there is between the union and the Association?

Mr. Jaureguy: I don't think he is suggesting that.

The Court: He says the union pays once a month.

A. No, I didn't say that. I said the National Hospital Association pays once a month.

The Court: Oh. You are not talking loud enough. I couldn't hear you.

A. I am sorry. The National Hospital Association pays once a month, that is on most cases. There are some that lapse over a little bit, but it pays once a month, and this time when they didn't pay at the end of the regular time I thought they were going to do the same thing as they did last year, 1948, and I didn't wait this year. I wanted them to put their cards out on the table. So I wrote them a letter requesting that they pay the November bill which was overdue, and they sent me a check with this letter enclosed.

Mr. Jaureguy:

Q. Well, how many months did they wait a year ago, that is from November, 1948? A. Till April.

Q. November to April. And then you went down
2543 and took your $1500 cut? A. Yes, sir.

Mr. Jaureguy: You may take the witness—oh, by the way, do other doctors in Linn County take tickets, do you know?

A. Yes. There is one in my town. There are two of us and we all take tickets down there, all two of us. There were three but one left. But everybody took tickets. We think it is a wonderful idea. Where I came from they didn't have that.

The Court: Just two doctors in a community of 8,000?

A. It gets kind of tiring.

The Court: You are sitting pretty, aren't you?

A. Yes. A lot of people go out of town. Lebanon isn't far away.

Mr. Jaureguy:

Q. How far is Lebanon? A. 13 miles.

Cross Examination

By Mr. Marcus:

Q. Doctor, you have been in Sweet Home since after the war? A. Since May 12th, 1947.

Q. And I believe you said there are about 8,000 people in Sweet Home? A. And the environment.

Q. And the environment. About how many would you say were National subscribers? A. I'd say about a thousand.

2544 Q. About a thousand. Well, Doctor, isn't it true that what you have just testified to is that there has been a dispute between you and National as to whether or not you have been padding the bills? A. I imagine so. You couldn't call it "padding". "Padding" means putting in figures without actually doing work, doesn't it?

Q. Well, it also means putting down calls, I suppose. A. No. I would say I wasn't charging them enough.

Q. Well, we are just engaging in a discussion of what "padding" might mean. At any rate they were disputing with you the correctness of your charges? A. That is right.

Q. Now, when you came to Sweet Home with whom were you associated, Doctor? A. Dr. Langmack.

Q. And he had a hospital there, didn't he? A. That is right.

Q. And you were in charge of the laboratory? A. I did general practice with him.

Q. Well, it is true, is it not, Doctor, that you were discharged by Dr. Langmack because he thought he wasn't

getting the collections from you that he should? A. I doubt it.

Q. You didn't discuss that? A. I didn't collect the money.

2545 Q. You never discussed that? A. No. We had an argument over other things.

Q. Now, Doctor, in November of 1948 you sent National a bill of $1500, didn't you? A. That is right, I guess so.

Q. And the next month you sent them a bill of $1700, didn't you? A. Yes, that is what he figured.

Q. And the next month you sent them a bill of $2300, didn't you? A. I didn't know it was that high. I didn't keep track of these numbers.

Q. What did you do, just at the end of the month, just put down what you thought— A. No, no. We have these bill forms. Every time a patient comes in there it goes directly on that bill.

Q. You are making out pretty well down there, aren't you, Doctor? A. Yes, I am.

Q. Now, Doctor, when these bills were sent in to National either you, or they took up the matter with you, and you had a discussion with Mr. Bechtold, isn't that so? A. I had to take it up with them because they didn't notify me about anything.

Q. Anyway it was taken up with Mr. Bechtold? A. Yes.

Q. And isn't it true that they thought those
2546 amounts were out of proportion to what they would consider should be coming out of that area as far as their liability was concerned? A. Oh, I suppose they would look at it that way.

Q. Well, they thought you were putting down more calls than should be put down, isn't that so? A. No, I don't think so. I think they thought that I was seeing the patients too often for certain types of diseases. That is the way I gathered it.

Q. You don't know, they didn't tell you, Mr. Bechtold didn't tell you at that conference that he thought you were making too many calls and merely suggested that you were seeing the patients too often? A. Well, he suggested that there were certain things like upper respiratory infections where the Portland doctors only gave them two shots whereas I would give them more.

Q. That is you putting down more? A. No. Giving more.

Q. And also putting down more? A. Well, you have to, don't you?

Q. And it is true, Doctor, that after you had this conversation with Mr. Bechtold you accepted a proportion of the amount you had sent in, isn't that so? You took a percentage? A. Yes, that is right.

Q. And then there was an interval when you were not sending in bills to National approaching these amounts, isn't that so? A. During the summer months I
2547 guess it is less.

Q. Well, I have taken you up to January? A. All right.

Q. January of 1948. From January of 1948 until November of—I must correct. Of January, '49. Between that period and the period of this letter, Defendants' Exhibit 2766, you did not send in bills to National approaching this amount, did you, these amounts? A. I never totaled these bills. I just send them in.

Q. Well, do you have any idea what kind of bills you were sending in during this period? A. No.

Q. Well, do you have any recollection as to whether your November bill was out of proportion to the other bills you had been sending in, or don't you recall? A. No. I never totaled the monthly bills and I never make an average. It's too much paper work for me.

Q. Well, do you or do you not remember the amount of the bill or the bills on account of which you wrote this letter? A. Yes.

Q. What were they? A. I think it was about $1000.

Q. Your November bill? A. Yes. Because I got a check for about that much. I haven't checked it yet.

2548 Q. And you don't know whether or not that is out of line with the bills you had been sending the preceding nine or ten months? A. No. I don't keep track of it that way. Langmack was out of town there for about two weeks. It usually runs less. When he is out of town naturally my bills get higher.

Q. Well, was he out of town during November and December? A. November.

Q. And January of 1949? A. Well, let's see. I don't remember that.

Q. And you admit, Doctor, that your bills are not in line with the average of the bills of doctors in that area who take and treat National Hospital Association patients? A. Well, according to their figures I am out of line.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. About this padding business. Was there any contention that you put down on your bills a house call when you didn't make the house call? A. No, there was no contention to that effect. The inference I believe was that I was making too many house calls, which I wasn't, because it was a tough winter for me. As a matter of fact I was trying to get out of it a little bit. Like this year, for instance, I do a lot of practicing over the telephone which I
2549 don't put down for.

The Court: That isn't a very good idea either, is it?

A. Well, you get so darn tired after while you have to do it once in awhile. Of course, if they want to come down to the office the next day, they can.

The Court: I still say it isn't a very good idea, is it?

A. No, it isn't. You should see your patients. You can get an idea, though, if it is an emergency or not. I would say that I wasn't charging them enough because I see those patients much more often than—

The Court: That is repetition. You better get another witness.

Recross Examination

By Mr. Marcus:

Q. One question. Do you also treat private patients? A. Yes. I say my insurance business is only about 25 per cent.

Mr. Jaureguy: That will be all.

(Witness excused.)

Mr. Jaureguy: Dr. Miller, please.

2550 Dr. Robert F. Miller was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please, Doctor? A. Robert F. Miller.

Q. And where do you live, Doctor? A. Portland, Oregon.

Q. What is your business or profession? A. I am an M.D.

Q. You have been practicing that profession how long? A. I graduated from medical school in 1935 and started in private practice in 1937.

Q. What medical school did you attend? A. University of Oregon Medical School.

Q. And did you have an internship or postgraduate work? A. I interned at the Multnomah County Hospital and I did preceptive work for five years and I was connected with the medical school a half a day for five years to qualify for my Board's internal medicine, and I took the exam and passed it.

Q. And during this time have you been a member of any medical society? A. Ever since I was able to be a member of the Multnomah County Medical Society I have, which automatically includes the Oregon State Med-
2551 ical Society and AMA.

Q. And has that membership been continuous? A. Been continuous.

Q. Have you been on the Council of either of those medical societies? A. I have been on the Council of Multnomah Medical Society from the years 1948, '48 and '49, and I am reelected now for another two-year period.

Q. During the course of your practice have you had occasion to care for patients who are members of commercial hospital associations? A. Yes.

Mr. Marcus: I would like to make the $64 objection, your Honor, with respect to this line of testimony on the same grounds as with respect to Dr. Durno.

The Court: Same ruling.

Mr. Jaureguy:

Q. I think you answered Yes. A. Yes, I have.

Q. And those—what commercial hospital association or associations are they members of? A. Industrial Hospital Association primarily. I think I have had National once or twice in my life. I belong to OPS and I take OPS,

and any insurance company, liability insurance companies. I can't name them. Sometimes they will have a claim and they will want to know whether the fellow has
2552 a poor heart or not. They pay the bills. I have a lot of those. I can't name those.

Q. Are you practicing alone or are you in association with other doctors? A. I am in association with two others.

Q. Their names are what? A. Ernest L. Boylen and Martin F. Gilmore.

Q. And do you know whether they take tickets or not? A. I think their situation and mine is identical, because we always talk over our business affairs.

Q. Now, you say you get more from Industrial than National. A. I mean National—may I explain?

Q. Yes. A. I have probably billed the National Hospital Association direct maybe once or twice only. The rest of them, my private patients, we have quite a few that belong to National, and they are perfectly happy to take my private bill and go do their own collecting. On Industrial my connection is there that I have been called up from their local office and they say, "We have a medical problem from out of town, would you like to go over it for us? Do what you want and charge us your regular fees." This I have done and they have always paid my regular fees.

Q. And you send your bill directly to Industrial Hospital Association? A. In those cases directly. Other Industrial Hospital patients that come in that I don't know their status, how they stand with their company, I give
2553 them my private bill and they do their own collecting.

Q. Now, since you have been on the Council of Multnomah Medical Society has there ever been any proposal that some attempt be made to prevent doctors from taking tickets? A. Not to my knowledge.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, you are part of a medical team which is well known and favorably, is that not so? A. I think it is, sir.

Q. Now, Doctor, you mentioned your association with Dr. Gilmore. A. That is correct.

Q. Dr. Gilmore was secretary of the Multnomah County

Medical Society, was he not, at the time Dr. Shea was President? A. That is correct.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Did he serve out his term, do you know? A. He certainly did.

2554 Q. He served out his full term? A. Yes.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Jaureguy: Dr. Hale.

2555 DR. WARREN W. HALE was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please? A. Warren W. Hale.

Q. And you live where? A. Portland.

Q. You have lived here how long? A. With the exception of the war, 13 years.

Q. And what is your business or profession? A. I am a psysician and surgeon and do general practice.

Q. And you have been practicing how long? A. I have been practicing since 1937 with the exception of the war.

Q. And you were in the service, were you? A. Yes.

Q. And what period did that cover, do you recall? A. That covered from '41 to the middle of '45.

Q. And aside from that you have been practicing continuously in Portland during that time? A. Yes, sir.

Q. Are you a member of any medical societies? A. The Oregon State and Multnomah County and the

2556 American Medical Association.

Q. And have you ever been an officer of any of those societies? A. I am at present. I was elected to the Council for 1950, the County Council.

Q. Have you attended any meetings? A. Yes.

Q. Now, during the course of your practice have you

had occasion to treat patients who are members or subscribers of commercial hospital associations? A. Yes, I have.

Mr. Marcus: I object, your Honor, to this line of questioning on the same grounds as made with respect to Dr. Durno.

The Court: Same ruling.

Mr. Jaureguy:

Q. You said Yes, you have. And in connection with that work do you know what the expression "taking tickets" means? A. Very well.

Q. And do you take tickets? A. We do in our office. I am in an industrial area in the north end and there are a number of mills there and the unions will change from one coverage to another, and it might be with the OPS for a while and then change to another organization. However, I do not accept tickets from National Hospital Association.

Q. But you take tickets from whom? A. From the Industrial Hospital Association.

2557 Q. And why do you make that distinction? A. Well, our—as far as the front office is concerned they handle the billing and so on and their relationships with the Industrial, which is one form of coverage for the men, has been mutually satisfactory.

Q. What about the National? Have you had some difficulties? A. Well, that dates back before the war.

Q. Now, has any medical society tried to tell you that you shouldn't take tickets? A. No, they haven't.

Q. Have you attended any Council meetings? A. Yes, sir.

Q. And at any meeting of the Council has there ever been a proposal that doctors should not take tickets? A. No, sir.

Q. Now, do you have any position with the OPS? A. For the last year, and I am on the committee again this year, Supervisory Committee of OPS.

Q. For Multnomah County? A. Yes, sir.

Q. And at any of those supervisory committee meetings has there been any proposal that attempt be made to induce doctors not to take tickets? A. No, sir; that isn't their function.

Mr. Jaureguy: You may take the witness.

2558 Cross Examination

By Mr. Marcus:

Q. Well, Doctor, I assume you attend these Council meetings when you have time to do so? You don't attend every meeting? A. I have only had the opportunity to attend one. That was during the snow storm. And tonight there is another one.

Mr. Marcus: That is all.

(Witness excused.)

Mr. Juaréguy: I am sorry, your Honor, we have run out of witnesses. I do have some reading. I am going to put into evidence a portion of the deposition we took of Mr. Bechtold and I would like to read a portion of that to your Honor, if I may.

Mr. Marcus: Well, inasmuch as we had Mr. Bechtold on the stand and inasmuch as no questions were asked of Mr. Bechtold by counsel at that time based upon the deposition I do want to object to the use of the deposition at this time or the introduction of any part of it in evidence, your Honor. Mr. Bechtold is not here.

Mr. Jaureguy: Under the rule this is admissible in evidence, under the Federal Rules of Procedure and also under our state practice.

Mr. Marcus: Well, your Honor, that may be true where the witness has not taken the stand. But, as I said, the witness did take the stand and no attempt was made
2559 to contradict any of his testimony by virtue of anything in the deposition, and that is why I do want to renew that objection.

Mr. Jaureguy: Under the rule it isn't limited to use for that purpose.

The Court: Admitted subject to objection.

2560 Mr. Jaureguy: (Reading):

"Q. How long has it been since the National Hospital Association has been operating under a system where members have their free choice of doctors? A. I couldn't tell you that exactly from memory. I could look it up, but it has been quite a number of years."

Then Mr. Marcus makes an objection.

"Q. Would you say it was since 1933? A. I would prefer not to answer that until I have refreshed my memory.

"Q. Certainly as early as 1940, don't you think? A. Yes, I would think so.

"Q. Perhaps this will refresh your memory. I will show you a letter dated March 18, 1940, and ask you whether, by that time anyway, you wrote your contracts so that your members had free choice of physicians?"

I may say that that was Exhibit 2383.

"A. Well, I still would like to reserve my final statement on that until I have an opportunity to refresh my memory, but this would indicate that we were giving free choice of physicians at that time.

"Q. By that time, at least? A. Yes.

"Q. Under your method of operation, when you try
2561 to take charge of a member, what is the duty of the doctor? I mean, in respect to the National Hospital Association. What do you expect of him? A. Well, we expect honest service to the member and fair treatment of the Association.

"Q. 'Honest service'—I take it that means conscientious— A. That is right.

"Q. —medical treatment? A. That is right.

"Q. Or surgical treatment? A. Yes.

"Q. And 'fairness to the Association—' A. I beg your pardon?

"Q. What was the next? A. Fairness to the Association.

"Q. I suppose you mean by that, not padding the bills? A. That is right.

"Q. What else? A. Well, information—getting information regarding the service rendered; getting information to the Association to enable it to check on the bills, like hospital bills, and so forth, and various relationships that we have with the doctors that have a bearing on it.

"Q. Those relationships, you say,— Just what
2562 does that mean? Those relationships which arise under contracts you have with doctors? A. We have no contracts with doctors.

"Q. You have no contracts with any doctors? A. No.

"Q. Do you have any doctors on your payroll? A. We have two or three doctors on retainers for the general work, but, beyond that, there is no one on our payroll.

"Q. Who are they? Are they in Portland? A. Yes.

"Q. So that whatever relationship you have with these doctors does not arise out of any contracts? A. That is right.

"Q. That is to say, if one of your members goes to a doctor other than these three that you have named— A. I might correct that by saying that one of the men has charge of the laboratory, and the purpose of maintaining these doctors on a definite retainer is to have somebody available when people come in the office for emergencies. The people are not required to go to these doctors.

"Q. You have no other crew of specialists or anything? A. No. One is X-ray man. He has charge of the
2563 laboratory.

"Q. Will you name him? A. Dr. Simmons.

"Q. Just explain how your system works. Assume a member, an employee of some employer in some town in Oregon, gets sick or has an accident; just take it from there. He goes to a doctor? A. That is right.

"Q. To any doctor he wants? A. Any doctor he wishes to see.

"Q. Then just what happens? A. Well, it depends on the doctor and on the patient. The doctor treats him the same as any other patient.

"Q. I will try to get at it this way: I am wondering if there is some method that we might call a normal method that is usually followed, and then you might give us any variations. I just want to get a general outline of how the plan operates. A patient goes to a doctor— A. Well, there is no particular method that I could describe. The patient has the privilege of selecting his doctor, and he applies to the doctor in the usual course and the doctor treats him. When the case is discharged, from there on it is a matter of a business transaction. Some doctors send their bills to us and some, to the patients.

2564 "Q. Then, I take it that in between the time the member enters the doctor's office and the time you pay the bill somebody has advised the doctor that this particular patient is a member of your Association? A. That is not required. Sometimes it is done; sometimes it is not.

"Q. You say it is not required. You mean not required by the doctor or is not required by you? A. Not required by the Association.

"Q. In other words, in so far as the Association is concerned, it is perfectly satisfactory for a patient to go to a doctor and the doctor furnish the service without ever knowing that the patient is a member of your Association? A. That is true.

"Q. Is it your policy to encourage that or to discourage

it, or is that a matter of indifference to you? A. A matter of indifference to us.

"Q. That is, it is not of any consequence to you whether the doctor knows, when he is furnishing the service, that your company is going to pay for it or not? A. That is right.

"Q. So you haven't any preference, then, whether the doctor sends you the bill or sends the member the
2565 bill? A. That is correct.

"Q. Well, if you haven't any preference, then you have not found one system is better than the other? A. Well, the doctors sometimes have a preference, particularly in the case where the man does not have any money. Then they prefer to send us the bill.

"Q. If the man hasn't any money, the doctor would rather send you the bill? A. Yes.

"Q. And, likewise, if the man hasn't any money, the doctor would rather have you send him the check? A. That is quite true.

"Q. Would you say most of the cases result in the doctor sending you the bill or in the patient sending you the bill? A. In most cases the doctors send us the bills.

"Q. Therefore, in most cases you send your check to the doctor? A. That is correct.

"Q. Would you be able to give us about what proportion that might be? Would that be as high as three-fourths of the cases? A. I wouldn't know that. I am not in the claims department myself and, therefore, I could not state positively; but my impression is that the majority
2566 of cases payments are made direct to the doctors.

"Q. And a majority of the bills are sent from the doctors? A. That is right.

"Q. That arises, as I understand your testimony, on account of a preference of the doctors and not on account of a preference on your part? A. Well, I have never considered that. I think probably it is largely a matter of custom that has grown up under these contracts.

"Q. Has there been any change in that custom in the last, say, twenty years? A. Yes, there has been.

"Q. What has that change been? A. Well, formerly all doctors sent their bills to the Association, and, more recently, there has been a departure from that.

"Q. It is true that formerly you had an arrangement with doctors in advance. That is correct, isn't it? A. That is right; in the early days, that is right.

"Q. But, since you abandoned that practice and have

given members free choice of physicians, has there been any change in the practice? A. Yes, very materially.

"Q. In what way? A. Well, in the early part of it, I wouldn't say all doctors, but practically all doctors sent their bills directly to the Association and made their reports to the Association and, gradually, the picture has changed so that today there are a considerable number of doctors who won't bill the Association, and some will not even accept its checks, unless they are unable to collect from the patient. Then they very readily accept the checks of the Association.

"Q. In the early days you had one or two doctors in a given town, wherever that might be, and then you told the employer to send the patients, or the members, to that doctor or doctors? A. That is true.

"Q. In those days, of course, the doctors always sent their bills to the Association, I assume? A. That is correct.

"Q. Then, at some time which, as I understand it, was probably to 1940, you changed your system? A. Yes, that is right.

"Q. I assume that the types of contracts that you have would show the history of the changes in your system, the changes in the relationship? A. I think they probably would, to some degree, but you cannot rely on that entirely either because sometimes the practice was not entirely indicated by the wording of the contract. I have in mind that for a long time we have been realizing the advantage of permitting patients to go to their own doctors.

"Q. What is that advantage, would you say? A. That advantage is largely the mental effect, the moral effect of the thing, in that we think it is better to permit them to choose their own doctors. Many members have their own family doctors and they like to go to them.

"Q. How long would you say you have realized that? A. Well, as I said before, I would not want to make a statement on that, because I would want to look it up. I just do not remember, but it has been a number of years.

"Q. I take it that realization has come from your own experience? A. Yes.

"Q. And you learned, I take it, rather early in the game, that you had more satisfied customers if you did it that way? A. Yes. It has been our policy to cooperate with the people who are rendering this service, both hospitals and doctors. I might state personally, if it is in order, I

commenced to realize it was not quite fair to other doctors in the community to deny them the right of treat-
2569 ing members, and that is what brought about the change, permitting them to go to any doctor they wished to select.

"Q. Then, I have been wondering a little whether this did not have some bearing on it: I may be guessing here; you can correct me if I guess wrong. Originally your dealings,—I mean, in writing your contracts,—were almost exclusively with the employers, but, with the growth of labor unions here, the labor unions themselves have insisted—I mean, as between them and the employers—that they have a hand in picking or designating the manner of writing your contracts, and, therefore, the practice has grown up in many industries of the labor unions themselves deciding, where, for instance, you have a large group of prospective members, that they should have the right to choose their own doctors. Is there anything to that? A. No, I don't think that has entered into the picture. Our work is largely in the lumber industry and, before they were organized, men in the lumber industry were permitted a free choice of physicians.

"Q. So you had already gotten into that practice? A. Yes.

"Q. Before the labor unions came along? A. That is right.

2570 "Q. The labor unions have been in the lumber industry a long time. A. That is true, but they were not organized. I think they were organized about—I don't recall now just exactly, but the first one was the Clark & Wilson Company, I believe.

"Q. That was about 1933. A. I do not recall that. Was it that early?"

(Thereupon, at 11:45 o'clock A.M., a recess was taken until 2:00 o'clock P.M., of the same day.)

2571 Court reconvened at 2:00 o'clock P.M., pursuant to recess.

Dr. Richard F. Berg was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, Doctor? A. Richard F. Berg.

Q. Where do you live, Dr. Berg? A. Portland.

Q. You have been here how long? A. Since about 1914.

The Court: I did not notice you when you came in or I would have told you "Hello."

A. Good afternoon.

Mr. Jaureguy:

Q. What is your business or occupation or profession? A. Physician and surgeon.

Q. You have been admitted to practice for how long? A. Since 1926.

Q. What medical school did you attend? A. University of Oregon.

2572 Q. Did you have any postgraduate work or internship? A. Yes, I interned a year at St. Vincent's Hospital in Portland, a year at Carney Hospital in Boston, in the orthopedic service, eighteen months at Boston City Hospital, and was resident surgeon in the orthopedic service, and at the Hospital for Ruptured and Crippled in New York City.

Q. Are you a member of any medical society? A. Yes.

Q. Which society? A. Multnomah County, Oregon State—

Q. And the American Medical Association? A. Yes.

Q. How long have you been a member of those societies? A. Since about 1926.

Q. Has that been continuous, since then? A. Yes.

Q. Did you serve in the armed forces? A. Yes.

Q. How long was that and when was it? A. I went on active duty the 1st of June, 1940, and was discharged the 22nd of January, 1946.

Q. Since you came back have you had occasion to treat patients who are members of commercial hospital associations?

Mr. Marcus: Your Honor, I would like to object to this line of questioning on the same ground as with re-

2573 spect to Dr. Durno.

The Court: The ruling will be the same. It will be admitted subject to the objection.

Mr. Jaureguy:

Q. Do you remember the question? A. I think I do, yes.

Q. Do you know what the expression means, "taking tickets" of hospital associations? A. I think so.

Q. That is, sending your bills to the hospital associations and accepting their checks? A. Yes.

Q. What has been your practice in that regard since you came back from the service? A. I have done so.

Q. Did you make any inquiry around before you did it? A. Well, when I first got out of the Army, I inquired as to what the situation was from two or three doctors, and they said they had heard nothing to the contrary, so I went ahead.

The Court: Were you in both wars?

A. Just for a very short time in the first one.

Q. Were you an M.D. then? A. No.

Mr. Jaureguy:

Q. Has any doctor or medical society, since you came back, told you you should not do that? A. No.

2574 Mr. Jaureguy: You may take the witness. Just a moment. I want to ask what hospital associations you took tickets from.

A. Well, from most any of them, I think, as far as I know —Industrial and National. I think those are the only two I came in contact with.

Mr. Jaureguy: Very well. Thank you. You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, prior to the war you were called up for disciplinary proceedings, were you not, with respect to your taking tickets from hospital associations? A. That is correct.

Q. Was Dr. Martzloff one of those to whom you had to report? A. As I remember, he was on the Board at that time.

Q. In 1938 you wrote to Dr. Charles E. Sears, Chairman of the Board of Censors,

"In the future, therefore, I will confine myself to the ethical practice of medicine as outlined by the American Medical Association and will avoid association with lay-managed and -organized hospital associations."

Do you recall saying that? A. I don't remember the details or the date, but I did write some communication to that effect.

2575 Q. You stated that after you came back from the war you started to take tickets of these associations. Isn't it a fact that for a considerable time after you came back you did not take tickets? A. No.

Q. Doctor, you were interviewed, were you not, by the FBI in 1948? A. I don't remember the date, but I remember the FBI Agent interviewed me, an FBI Agent.

Q. Do you recall stating to him that upon resuming practice after military service you adopted the policy of handling all cases strictly on an individual basis? A. That is true. I always do.

Q. Do you recall telling him you desired only to deal directly with the patient and not with any hospital association? A. Well, in my practice, that is my policy. I always deal directly with them.

Q. In other words, you do not deal directly with the hospital association? A. No, only indirectly.

Q. As a matter of fact, I suppose in your specialty you do not have very many hospital association patients, do you? A. Not too many.

The Court: Did you put his specialty on the record?

Mr. Jauregui: No, your Honor.

2576 Mr. Marcus:

Q. I will ask you what your specialty is, Doctor? A. Orthopedic surgery.

Q. Do you recall talking to Mr. Bechtold of the National, after your return from the armed forces, with respect to this matter of dealing with the hospital associations? A. I do not recall it at this time.

Q. You may have had such a conversation? A. I may have, but I don't recall it.

Q. In any event, as I get it now, you treat the patient as an individual patient and do not deal with the hospital association? A. Well, I treat them as individual patients and if they happen to have that slip, an authorization slip from a hospital association, it is turned over to the secretary and she handles that.

Q. I am not clear in my mind whether you are stating that you send in these hospital association slips to the hospital associations and get paid by the hospital associations, or whether you look to the patient to either get a check from the hospital associations or get paid by the patient? A. As I believe, our secretary sends these slips. The patient is contacted by the secretary and she takes care of the business end of it. I think she sends them to the hospital association or they are billed to the patient. In some cases it is one way; in some cases it is the other, whichever is more convenient.

Q. You say you don't know what system your office uses?

2577 A. Well, I know that it is done both ways. Sometimes a bill is sent to the patient, and if they bring in a slip for authorization for care then it is sent to the hospital association for payment.

Q. That is your statement now, is it, Doctor, that this has been your practice all the time since you came back from the armed forces? A. That is right.

Q. You are sure it has not been your practice fairly recently to do so and not before? A. No.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. When you send these bills to the hospital associations you get checks from the hospital associations? A. Yes.

Q. And you cash the checks, of course? A. That is right.

Mr. Jaureguy: That is all; thank you.

(Witness excused.)

2578 Mr. Clyde C. Foley was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

The Court: How did you stay out of this so long?

A. I don't know, sir.

Mr. Jaureguy:

Q. Give us your name, please. A. Clyde Foley.

Q. Where do you live? A. Portland.

Q. You have lived in Portland how long? A. Since 1909.

Q. What is your business or occupation? A. I am Executive Secretary of the Oregon State Medical Society and the Multnomah County Medical Society.

Q. How long have you had that position? A. With the State Medical Society since May, 1926; with the County Society since about 1929, with the exception of a short time in 1946, and during that time the two societies temporarily had a separate administration, and since that time the old arrangement was resumed.

Q. When they had separate arrangements, which one were you secretary for? A. Oregon State.

2579 Q. So you have been Secretary of the Oregon State Medical Society since 1926? A. That is right.

Q. Continuously? A. That is right.

Q. And Secretary of the Multnomah County Medical Society since 1929, except during a period of a year or two? A. Yes.

Q. You seem to nod, but sometimes I am not sure that the Reporter can get your answers; so be sure to answer. A. The answer is Yes.

Q. In the State of Oregon is a doctor automatically a member of the State Medical Society if he joins a county medical society? A. No. Ordinarily, yes, but the thing is that it takes a separate act for him to affiliate with the State Medical Society, which is the payment of the State Medical Society dues.

Q. Is membership different in Oregon in that respect than in most of the other states? A. Yes, I think the common practice over the country is that the local component medical society collects dues of its own society and the dues of the State Society and remits them to the State Society periodically, usually monthly, I think. We have never followed that practice in this state, in my time.

Q. Are there any counties in Oregon whose medi-
2580 cal society follows that practice? A. No.

Q. Where the county society collects dues for the State Society and sends them in? A. There are none.

Q. That is not true in Multnomah County? A. In Multnomah County the State Society collects the dues, the re-

verse procedure, and remits the dues, the county dues, to the county society, periodically.

Q. Would it be possible for a doctor to be a member of the Multnomah County Medical Society without being a member of the State Society? A. No, it would not.

Q. But in the rest of the state— A. —the other is true.

Q. There is evidence here that at one time there was an amendment to the bylaws of the Multnomah County Medical Society providing for automatic termination of membership at the end of each year and being re-elected to membership. Do you recall that? A. Yes, I recall that.

Q. What happened to that arrangement? Was it ever followed out? A. It was never actually placed in effect.

Q. So there has not been an annual election of all members over again each year? A. No.

2581 Q. So I suppose either the Medical Society does not have these old members or else they have all continued? A. That is right?

Q. It has been recognized, has it, that a membership continues, then, without this automatic election? A. That is right.

Q. Do you recall, starting 1936, there were were certain proceedings with respect to doctors being employed on the panel of hospital associations, and some of them were expelled from the Society? Do you recall that? A. Yes.

Q. Have there been any such proceedings, either in Multnomah County or elsewhere in the State of Oregon, since the year 1940? A. Not to my knowledge, no.

Q. Would you know about it if there had been, in Multnomah County? Have there been any in Multnomah County since then? A. No.

The Court: For any purpose? For any reason?

Mr. Jaureguy: No, I did not ask him that. I will ask him, though.

Q. You understand I am confining my question to proceedings on account of some conduct of a member with relation to hospital associations. A. I understand.

Q. That is your answer. That is what you are answering. You are not telling whether ther have been any

2582 on account of something else that a member might have done? A. That is right.

Q. Do you recall an organization known as the Multnomah Industrial Health Association? A. Yes, I do.

Q. Do you know anything about its organization, when

it was organized, when it was in existence, and the history of that organization? A. Something, yes.

Q. Just tell us briefly the history of that organization. A. Well, the Multnomah Industrial Health Association was organized—its organization started with a group of members of the Multnomah County Medical Society. They came to the Council of the Society with this proposal, and the proposal, as I recall it, was approved subject to certain conditions which were set out in the action of the Council at that time, the details of which I am not familiar with.

The organization proceeded and was incorporated as a hospital association and received the approval of the Society following its organization, and engaged in business subsequently thereto.

Q. Well, at a later date was the approval withdrawn? A. The approval was withdrawn, yes.

Q. Did it continue doing business? A. It con-
2583 tinued doing business.

Q. Then, at a later date was re-approval granted? A. Certain reorganization was effected and it applied for approval again. One of the changes was a change in name. It became the Multnomah Medical Service Bureau. I can't recall the date now, but I imagine it was somewhere around 1940.

The Court: Is Dr. Dammasch still living?

A. Yes.

The Court: Is he still practicing?

A. He does some practice, yes.

Mr. Jaureguy:

Q. Then how did it go out of existence? A. It went out of existence—again, I can't be specific in regard to the year, but its contracts were taken over by the Oregon Physicians' Service, and after that time, after that was done, the organization ceased to exist.

Q. Do you know a doctor practicing in this county by the name of Dr. Frank Menne? A. Yes.

Q. Does he have any official position with the Medical Society? A. As far as the State Medical Society is concerned, he was on the Committee of Public Relations last year, I think the year before; but the committee has not yet been appointed for this year, so he has at the present time no official relationship with the State Society.

Q. What about the County Society? A. As far as
2584 I recollect, he does not have any relationship with the County Medical Society, any official relationship.

Q. Is he a member of the Council? A. Dr. Menne has been a member of the State Council.

Q. Has he been a member of the County Council? A. I am not positive, but I rather think so, a number of years ago.

Q. Do you know when he was a member of the State Council? A. I can't give you the years, but he served two full years and I think then he withdrew because of the pressure of other duties. No, he served a full term of three years, I believe. I think it was in his second term that he withdrew. That is recently, within the last five years.

Q. Do you regularly attend meetings of the Council of the Oregon State Medical Society? A. I do.

Q. Do you regularly attend meetings of the Council of the Multnomah County Medical Society? A. I do.

Q. At any of these meetings of either Council has there been any proposal to endeavor to prevent doctors from taking tickets of hospital associations since 1941? A. No.

Q. Are you acquainted with the Permanente Foundation Hospital and organization? A. To an extent.

2585 Q. Do you know whether or not the hospital in Vancouver is approved by the American Medical Association for internship? A. It is my undestanding it is approved for internship and also—at least it was at one time—approved for residency in certain specialties.

Q. Are there any other doctors connected with the Permanente who have been members of the State Medical Society? A. Yes. I think of two, Dr. Ullman and Dr. Mossman. At one time I think Dr. Fox was with the Foundation for a brief time.

Q. Was with the Foundation when he joined the Society? A. Of whom are you speaking?

Q. Dr. Fox? A. Yes. It is my recollection he was.

Q. Now, Mr. Foley, Dr. C. Harold Palmer, has he been on any committees recently of the Multnomah County Medical Society or the State Medical Society? A. Yes. In 1949 he was a member of the committee of the State Medical Society called the Committee on the Study of the Oregon Physicians' Service and Other Voluntary Plans. In the County Society he was a member of the Committee on Industrial Health, in the year of—I think it was 1949, also. In about 1943, right about then, he was a member of the

Committee on Medical Education and Hospitals of the County Society.

Q. I think the record in this case shows that in 1948 there were sixteen hundred and some-odd doctors admitted or licensed to practice medicine in this state.

2586 At my request have you tried to make an estimate of the approximate number of those doctors whose work is not such that they would come in contact with the hospital association business? A. Yes.

Mr. Marcus: I object to that, your Honor. That must be a pure conclusion on the part of the witness, unless we have documents on which such statement is based. Otherwise we have no way of checking a statement of that sort.

The Court: Overruled.

(Question read.)

Mr. Jauregpy:

Q. When you answer, give us the types of occupations that doctors are in or specialties or whatever it may be that would be such that they would not come in contact with patients who have memberships in hospital associations, or coverage in hospital associations. A. Well, in the first place, I have the State Medical Board Register which is a list of those physicians who are licensed to practice and who have registered for the years stated and paid their annual registration fee with the Board. It includes a considerable number of physicians who, for all practical purposes, are out of the profession. That is, they are maintaining no office. They probably are at home and see a few old patients. The number of those people I don't know. Any comments I am making about those

2587 are, of course, to be estimates.

Q. Yes. A. They are not too accurate figures. The actual figures could be obtained.

Turning to the question of doctors that are not interested in hospital association work for other reasons, there is a group of full-time teachers at the Medical School who normally do not engage in private practice. There is also a group of County Health Officers, full-time, and State Health Officers who spend full time in their particular functions, apart from private practice. There are a certain number of county physicians who render service to the indigent who are not normally in private practice.

I think that completes the list of those.

Q. What about institutional doctors? A. That is cor-

rect. That should be added—doctors serving in the tuberculosis hospital and State Hospitals for the Insane. Apart from that, there are a number of medical specialists who do not concern themselves with this type of practice.

Mr. Marcus: I object again, your Honor. This witness has not been qualified as an expert as to what specialties are followed in the field of these hospital associations.

The Court: Overruled.

A. The comments I will make now are based on perhaps limited knowledge of the coverage that these organizations offer, but normally the industrial contracts, covering
2588 employes, groups of employes, have, for the greater part of this period that is under consideration, provided no care for children or wives; in other words, dependents were not included, so that doctors engaged in the practice of pediatrics, diseases of children, or obstetrics and gynecology, the latter term covering diseases of women, are normally not interested in doing this type of work. Likewise, I think these contracts are quite limited in respect to coverage for nervous and mental diseases, so that neurologists and psychiatrists are not particularly concerned with prepaid care.

So, with all of those exceptions, I would estimate there are at least 300 or 350 physicians whose names appear in the State Board Register who are not, for the reason stated, concerned with hospital association or contract practice.

Q. That would not include a doctor in some town where a hospital association had not reached? You did not take into consideration in arriving at your estimate that there might be some towns in remote parts of Eastern Oregon where the hospital associations had not reached? A. You mean doctors' geographical locations? No.

Q. There is some evidence here, brought out by the Government, that the Multnomah County Medical Society operates a telephone exchange for people to call doctors if they cannot get them at their regular phone. Do you know about that? A. That is correct.

2589 Q. Is there any other exchange of a similar nature? A. Yes, there are two or three other exchanges in town.

Q. Have you gone through the telephone book to ascertain whether members of the Medical Society sometimes do not use their own exchange but use some other exchange? A. It is true. A good many doctors use other exchanges.

Q. In lieu of their own exchange? A. That is right.

Q. Do you know whether your exchange limits customers to the exchange to members of the Medical Society? A. Which exchange?

Q. The one that is run by the Medical Society? A. Perhaps I should explain the organization of the exchange. It is operated by what is called the Medical Society Telephone Service, Inc., which is an independent, non-profit corporation organized for this specific purpose. Its bylaws provide that the Council of the Multnomah Medical Society shall nominate five subscribers of the exchange at each annual meeting of the exchange subscribers, from which the subscribers elect a trustee, a single trustee at any one year—three trustees altogether. It is operated by a separate non-profit corporation, operated by three trustees who are subscribers to the exchange. They are physicians, of course.

Q. Does the Multnomah County Medical Society have some connection with some collection agency or department? A. Yes, they operate a credit and collection bureau; that is right.

2590

Q. Is that business restricted to members or to doctors who are members of the Society? A. No.

Q. Any doctor that wants to have his bills collected can do it through that organization? A. That is right.

Mr. Jaureguy: I think you may take the witness.

Cross Examination

By Mr. Marcus:

Mr. Foley, where do you find the statement that to have membership in the State Society you have to pay State Society dues? Where is that found? Is that in the State Society Constitution or Bylaws? A. I don't know whether it can be.

Q. Is it in the State Constitution and Bylaws? A. I can't be certain of that. I was answering the question with regard to practice.

Q. That wasn't what I understood. You made the statement that this was the way you got membership in the State Society and no other way. I am asking you where such requirement can be found? A. Probably in the State Society Bylaws.

2591

Q. You believe it is in the State Society Bylaws? A. Yes.

Q. If it is not there, where do you think it might be? A. I think that is the only place it could be.

Q. You were asked a question with respect to disciplinary proceedings. Can you tell us what disciplinary proceedings were brought between 1936 and the present, other than with respect to unethical contract practice?

Mr. Jaureguy: I object to that as incompetent, irrelevant and immaterial.

The Court: He may answer.

Mr. Jaureguy: Pardon?

The Court: Answer.

Mr. Jaureguy: Could the witness be instructed he is not to name names?

The Court: You are not interested in their names, are you?

Mr. Jaureguy: This is as to the matter of other than—

The Court: I am asking Mr. Marcus. Are you interested in their names?

Mr. Marcus: I am interested in finding out whether or not anyone has been expelled from the Society. If the answer is Yes, I will want to know the period and be allowed to look at the records.

The Court: He wants to know about other disciplinary proceedings, for other reasons.

2592 A. I think the answer is No.

Mr. Marcus:

Q. Could you tell us the difference between the position of executive secretary and secretary of one of these societies? A. Are you speaking of the State Medical Society?

Q. Let's take both, or is there only an Executive Secretary of the State Society? A. No, in both.

Q. Take both, and explain, please. A. Both societies—let's take the Oregon State Medical Society. It has a Secretary who is elected along with other officers and is an officer of the Society. The Executive Secretary is an employe, an administrative officer employed for that specific purpose, and the same would be true also in the Multnomah County Medical Society.

Q. When you say "elected" does that mean for the same term as the President, or is there a special term for that? A. The Secretary's term along with that of the President and some other officers, is one year, in both societies.

Q. Mr. Foley, the question came up the other day with

respect to the Minutes of the House of Delegates which met last fall, and I asked your counsel to obtain those minutes. I believe he was going to contact you about them.

Mr. Jaureguy: That is correct, and you can ask him, or I will, whether the Minutes of the House of Dele-
2593 gates have been written up.

Mr. Marcus:

Q. I will ask that question. A. They were taken down by a transcribing machine and they have not been edited. The form in which I gave them to Mr. Jaureguy was the form in which they were transcribed from the machine by the stenographer and they have not yet been edited; that is the point.

Q. You mean they are in English, but not edited, is that right? A. That is right.

Mr. Jaureguy: They are minutes made by transcription of certain speakers and so on.

A. It is an exact record as near as the stenographer could take it off the sound machine.

Mr. Marcus: I wonder whether we might be able to examine those minutes? Do you have them available?

Mr. Jaureguy: You will be able to in the event the Judge requires us to produce them; otherwise, not.

The Court: What do you want them for? What is the point?

Mr. Marcus: I want to see, your Honor, what occurred at the last meeting and whether what occurred relates to the instant case.

The Court: I want to see them, too.

Mr. Jaureguy: You want to see them?

The Court: I will have to, I think.

Mr. Jaureguy: Should I deliver them to your
2594 Honor or to Mr. Marcus?

The Court: To Mr. Marcus, first.

Mr. Jaureguy: I think I have them here.

(Documents produced.)

Mr. Marcus:

Q. Mr. Foley, in the list which I believe you furnished to the Government of pending applications for membership was the name of Dr. A. E. King. Would you happen to

know when that application was made? A. I couldn't recall, no.

Q. Could you obtain that information and acquaint us with the fact? A. Yes.

Mr. Jaureguy: Let the record show I am now handing to counsel a bulky document that the witness has described as a transcript of the proceedings of the House of Delegates, 1949, under order of the Court.

The Court: Direction.

Mr. Jaureguy: Direction of the Court.

Mr. Marcus:

Q. Did you know Dr. Thomas Joyce? A. Yes.

Q. Was he one of the founders of the Portland Clinic? A. I believe so.

Q. When did he pass away? A. I don't recall the exact year, but it was within the last three or four years,
2595 I would say.

Q. Mr. Foley, you stated you regularly attended or attend meetings, as I understand, of both the Multnomah County Medical Society and the State Medical Society? A. That is of the Council? Yes.

Q. You stated that since 1940 you have not heard any resolution or discussions of—with respect to doctors not taking tickets from hospital associations? A. Well, that "taking tickets" phraseology is rather—I would answer it, No, I have not heard.

Q. Have you heard any discussions of hospital associations at any of these meetings since 1940? A. Not to any great extent.

Q. You have heard some, though? A. Some, yes.

Q. Have you heard any discussions at all with respect to the matter of doctors dealing directly with those hospital associations since 1940? A. I think not.

Q. It has never been discussed? A. I can't recall any specific time when it was discussed.

Q. Did you ever hear any discussions with respect to doctors not dealing with prepaid medical care organizations which had not been approved by the Medical Society?

Mr. Jaureguy: Pardon the interruption. I want to be sure that Counsel and the witness are talking about
2596 the same thing. I spoke after 1941; you speak after 1940. Now you are not putting any date on it.

Mr. Marcus:

Q. Let us put in some date, say 1940. A. Well, I will have to say I can't recall any specific instances.

Q. You mentioned the names of Dr. Mossman and Dr. Fox. I believe you said Dr. Mossman is with Permanente, or was? A. It is my understand that he is. I may be wrong.

Q. And that he is a member of the Multnomah County Medical Society? A. That is right.

Q. About how long has he been a member? A. I couldn't state that with any degree or accuracy.

Q. Ten years? A. I would say five or six years.

Q. At least? A. I would say—this is merely an estimate of the time—

Q. Would you say it was ten years? A. I don't think it was ten years.

Q. You have a record of it, would you say? A. Yes.

Q. Could you obtain that for us? A. Yes, surely.

Mr. Jaureguy: Are those the records that Counsel had copied?

2597 A. Yes.

Mr. Marcus: The record should show when, that is true. That is right. You are right, Mr. Jaureguy.

Q. With respect to Dr. Fox, did you say that he was a member of Permanente or that he is a member? A. My recollection of Dr. Fox is that he was with Permanente for a brief time and is not now with Permanente.

Q. Mr. Foley, in your capacity as Secretary, Executive Secretary of the State Society, you have regularly corresponded with the County Medical Societies throughout the state, have you not? A. I don't know what you mean by "regularly corresponded."

Q. Well, you used the term "regularly" before in connection with a matter. I assume you know what I mean by "regularly." A. Correspond with them on occasions, I would say.

Q. You have corresponded with all of them on occasions, have you not? A. Well, I think that would be correct.

Q. And you have, fairly regularly, since, say January of 1936, visited these County Medical Societies, have you not? A. No.

Q. Could you name the ones you have not visited during this period? A. Offhand I could not.

Q. You have visited most of them during this period, have you not? A. I would say No.

2598 Q. Which ones have you visited? A. I don't think I can answer that offhand.

Q. What is that? A. I don't think I could answer that offhand. I could, by areas, some, probably; but I could not just offhand.

Q. You are certain, are you, that you did or do visit some of them? A. Yes.

Q. In this flow of correspondence between you and the local medical societies, that included, or did it, any matters involved in this matter of industrial contract practice and dealing with hospital associations? A. There is some correspondence of that character, yes.

Q. And that was also among the matters that you dealt with when you visited the County Medical Societies, is that not so? A. I don't think that I have ever visited a County Medical Society and discussed that subject matter.

Q. Mr. Foley, you made a list of doctors and were willing to make a statement for the record that they did not come in contact with hospital association patients.

The first category was that of teachers in medical schools, isn't that right?—at the Medical School? A. That was one of them, yes.

2599 Q. I assume you are aware that Dr. Kingery testified in this case, are you not? A. Yes, I am aware of it.

Q. Was he a teacher at the Medical School at the time he was taking hospital association tickets? A. He is what is called a volunteer teacher. He is not a full-time paid teacher.

Q. You make a distinction between full-time paid teachers and volunteer teachers? A. I think my testimony shows I just used the word full-time.

Q. Is that true with respect to County Health Officers, full-time? A. Yes. What I was referring to was full-time people.

Q. You also excluded, I believe, neurologists and psychiatrists, is that right? A. That is right.

Q. Under OPS is there any provision made for using psychiatrists? A. A very limited one. I thought I made that plain.

Q. I didn't understand you mentioned that. There is some provision for using psychiatrists under OPS coverage, is that right? A. Some, but it is very limited.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. Do you know Dr. Newsome? A. Yes.

2600 Q. Where does he practice medicine? A. At the present moment?

Q. Yes. A. Someplace in California. I don't remember the exact location.

Q. Was he formerly a member of the Society? A. Yes, he was.

Q. Was he associated with other doctors in Portland? A. Yes, he was.

Q. Who were they? A. Drs. Phillips and Staats.

Q. About what time was he admitted to the Society, do you know? A. It was subsequent to the war, because Newsome was a veteran. I think it was 1947. I think that is correct.

Q. Was he associated with Drs. Phillips and Staats when he was admitted to the Society? A. Yes.

Q. I don't know whether I have covered this or not, whether Dr. Mossman was with Permanente at the time he was admitted to the Society? A. He was, yes.

Mr. Jaureguy: I think that is all.

Mr. Marcus: That is all.

(Witness excused.)

2601 Mr. Jaureguy: We had a couple of other witnesses that we thought would be here. If we could have a ten-minute recess, now,—

The Court: Just as soon as that gentleman at the door finishes his cigarette, he can come in. I think that is what his problem is.

Mr. Jaureguy: We did have one witness coming up. I don't know whether he knows anything about the case or not.

Mr. Marcus: By all means, put him on.

Mr. Jaureguy: And then we had one or two others.

The Court: Take the recess.

(Recess, 2:45 P.M. to 3:12 P.M.)

2602 DR. EUGENE P. STEINMETZ was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name, please? A. Eugene P. Steinmetz.

Q. What is your business or profession? A. Physician and surgeon.

Q. How long have you practiced that profession? A. Since 1919.

Q. In Portland? A. In Portland since 1920.

Q. Since 1928? A. 1920.

Q. Where did you get your medical education? A. At the University of Oregon Medical School.

Q. Did you have any postgraduate work or internship? A. Internship at the County Hospital and postgraduate at New York Lying In Hospital in the years 1920—part of the years 1919 and 1920.

Q. Speak up just a little louder so we can all get it. Have you been practicing in Portland since then, Doctor? A. Continuously.

Q. Continuously? A. Continuously since 1920.

2603 Q. Have you been a member of any medical society? A. I have been a member of the Multnomah City and County, and the State Medical Society, yes, and specialty societies also.

Q. The American Medical Association? A. The American Medical Association, yes.

Q. How long have you been a member of those three societies? A. Oh, since 1920.

Q. Continuously? A. Continuously.

Q. During the course of your practice, have you had occasion to treat patients who are members or subscribers of commercial hospital associations?

Mr. Marcus: I object to that, your Honor. I make the same objection with respect to this line of questioning as made with respect to Dr. Durno.

The Court: The same ruling. The testimony is admitted, subject to the objection.

Mr. Jaureguy:

Q. Did you get the question? A. Yes.

Q. The question was whether you have treated patients

who are subscribers or members of commercial hospital associations? A. Yes, I have.

Q. Do you know what the term means "taking tickets"? A. Yes. I think I am familiar with that.

2604 Q. That means, as I understand it, sending your bills to the hospital associations and receiving checks from them. A. Yes.

Q. Have you taken tickets? A. Yes.

Q. Has that continued up to the present time? A. Yes. I asked the secretary about that just yesterday and she said there were several on the books right now, yes.

Q. You asked the secretary? A. Yes.

Q. Is that done with your consent? A. Yes, surely.

Q. Have you been an officer of any of these medical societies? A. I am at present on the Council of the City and County Medical Society.

Q. We can always tell who the doctors are who started to practice before 1926, because they call it the "City and County Medical Society." I think the official name is the Multnomah County Medical Society, is it not? A. That is correct.

Q. In the last two years, you have been a member of the Council? A. Yes, I went on in January, 1949, for a two-year term.

Q. At any meeting of the Council has there ever been a proposal that some endeavor be made to stop doctors from taking tickets? A. Never at all, to my knowledge.

2605 Q. Or at any other time, has any doctor or medical society stated to you that you should not take tickets? A. No. There never has been—never any questions asked of me about it. If there had been, I probably would never have been recommended for the Council.

Q. You mean if there had been such a policy to try to prevent it? A. Yes, that is what I mean.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Are you a specialist? A. I am.

Q. What is your specialty? A. Obstetrics and gynecology.

Q. In that specialty, you do not have much contact with hospital associations, do you? A. I presume not as much as a general practitioner.

Mr. Marcus: That is all.
Mr. Jaureguy: That is all.

(Witness excused.)

2606 DR. WALTER C. REINER was thereupon produced as as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Give us your name, please. A. Walter C. Reiner.
Q. Where do you live? A. 6565Southeast Scott Drive.
Q. Portland? A. Portland.
Q. How long have you lived in Portland? A. About 16 years.
Q. What is your business or profession? A. Physician and surgeon.
Q. You have been practicing medicine how long? A. Fifteen years.
Q. In Portland? A. In Portland, yes.
Q. What medical school did you attend? A. The College of Evangelists, Los Angeles.
Q. Did you have any postgraduate work or internship? A. Cook County Hospital, resident in surgery, and internship.
Q. Since then, you have practiced in Portland? A. In Portland.
2607 Q. Are you a member of any medical society. A. The Multnomah County Medical Society.
Q. What about the State Medical Society? A. And the State Medical.
Q. The American Medical Association? A. Yes.
Q. How long have you been a member of those societies? A. Since 1935.
Q. Have you been an officer in any of those societies? A. Councilman in the local, Multnomah County Medical Society.
Q. When you were a Councilor? A. 1949, January.
Q. Have you been a delegate to the State Society? A. Yes.
Q. When was that? A. In 1948.
Q. During the course of your practice have you had occasion to treat patients who are members or subscribers of commercial hospital associations? A. Yes, sir.

Mr. Marcus: Your Honor, I object to this line of questioning on the same ground as made with respect to Dr. Durno.

The Court: Admitted, subject to the objection.

Mr. Jaureguy:

Q. I think you answered Yes? A. Yes.

2608 Q. Do you know what doctors mean by "taking tickets"? A. Yes, sir.

Q. What is your practice with respect to taking tickets or not? A. I have been taking them, sir.

Q. For any length of time? A. Oh, for years.

Q. Has any medical society or doctor ever told you you could not do that? A. No, sir.

Q. At any meeting of the Council or House of Delegates, has there been any proposal that doctors should be induced not to take tickets? A. No, sir.

Q. Which commercial hospital association do you take tickets for? A. Industrial and National.

Q. Are you a cooperating physician of OPS? A. Yes.

Q. Are you on an advisory committee of OPS? A. I was, sir.

Q. When was that? A. One year ago; served a term.

Q. Was there any proposal ever made there that doctors be induced not to take tickets? A. No, sir.

Mr. Jaureguy: You may take the witness.

2609 Cross Examination

By Mr. Marcus:

Q. You stated, Doctor, that no medical society had ever told you not to take tickets, is that right? A. Yes, sir.

Q. I have here Exhibit 1965, which is a letter to you from the Multnomah County Medical Society, dated March 4, 1936. It reads:

"The Multnomah County Medical Society has received information which appears to indicate that the contract practice engaged in by you in connection with the Prudential Hospital Association is conducted in a manner which is in violation of the Principles of Medical Ethics of the American Medical Association.

"It is felt that an investigation of this matter should be made, for the good of all concerned.

"At a meeting of the Board of Censors to be held in the auditorium of the Medical-Dental Building on the 11th

day of March, 1936, at 8:30 o'clock P.M., the Board will make an investigation of this matter. This letter is to give you notice of the meeting and an opportunity to be heard."

Does that refresh your recollection whether any medical society took up with you this matter of dealing with hospital associations? A. What year is that, sir?

2610 Q. 1936. A. I had been in practice one year at that time.

Q. Well, is your answer Yes or No? You made the absolute statement on direct examination— A. Yes.

Q. —that no medical society ever told you whether or not to take tickets. Does that refresh your memory to the contrary? A. I don't remember receiving that letter. That has been a good many years ago.

Q. I will read another part of this same exhibit. This is from the Chairman of the Board of Censors of the Multnomah County Medical Society, and it is dated March 14, 1936. It is addressed to Dr. W. C. Reiner. It reads:

"At the meeting of the Board of Censors held in the auditorium of the Medical-Dental Building on March 11th, the Board inferred from your statements that you desire to discontinue your present association with contract practice and henceforth conduct yourself in conformity to the Principles of Medical Ethics.

"The Board of Censors desires a definite statement from you concerning any action you may take or plans you may have regarding this matter. The Board desires this information before its next monthly meeting.

"The Board appreciates your appearance at the informal meeting on March 11th and your attitude during this conference."

2611 Does that refresh your recollection? A. Yes.

Q. Then, we have a letter—this is still part of the same exhibit. We have a letter from Dr. W. C. Reiner to the Multnomah County Medical Society, dated March 18, 1936:

"Your letter of March 14 is at hand, and I wish to state that I think your cause a very just one. I am heartily in favor of your plan. I have confidence that you will apply the same measures to other members who are in any way associated, or rendering consultations or specialized service to contract groups.

"I have discontinued taking Prudential calls and shall

henceforth conduct myself in conformity to the Principles of Medical Ethics."

Does that refresh your recollection? A. Yes, sir.

Q. It is true, is it not, that for some time you ceased dealing directly with these hospital associations? A. Very probably so for a time, I did. However, a number of doctors began starting to treat patients for these associations, and I continued to treat them again; as soon as I found the policy of the Medical Society had been reversed and the doctors were still taking patients I started to take them also.

Q. How did you know anything about the policy of the Medical Society? A. From the group of doctors
2612 that I am associated with.

Q. The group of doctors you are associated with? A. Yes.

Q. Now, Doctor, could you give us the names of those doctors? A. Just the group in the hospital, a group of doctors in our local hospital.

Q. What are their names? A. Oh, I think the general members of the staff, on the staff of the hospital. There are about a hundred.

Q. Doctor, when you say you have been dealing with these hospital associations, that is in connection with your private practice? A. Yes.

Q. Doctor, we have had some testimony today from another doctor with respect to the National Hospital Association cutting down his bills because they were quite in excess of the average of the bills of other doctors. Has OPS ever done that, to your knowledge? A. I think that is a general policy with most of the prepaid hospital groups. They go over their bills and adjust them to the fee schedule.

Q. That would apply to OPS, wouldn't it? A. Yes.

Q. They would consider whether or not the average bills of the doctors were in excess of the average of other doctors, is that not so? A. Yes, that is right.

2613 (Bill of a doctor brought down to average of other doctors by OPS thereupon marked Plaintiff's Identification No. 2082.)

Mr. Marcus:

Q. I show you Plaintiff's Exhibit marked for identification 2082, and ask you whether this is an example of bills of a particular doctor being brought down to the average

of other doctors by OPS? A. Yes, I served on that committee and I saw many of those.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. The method of operation, as far as you and the other doctors were concerned, was different in 1936 with Prudential than it is now with Industrial and the National Hospital Association? A. A good deal different.

Q. What was the difference? A. Well, in those days with that particular hospital association the practice was confined to a group of physicians in their own building, and they very seldom asked other doctors to take their calls for them. They had a group of four or five physicians, I believe. It was only on emergencies that they did ask other physicians to make calls for them.

Q. Well, were you one of that small group or not?
2614 A. No, I had no connection with them whatsoever.

Q. But Prudential would send patients to you? A. No. The only time I ever saw them was in emergencies, on calls, house calls. I never saw them for any other condition, as I remember.

Q. Can you tell us about when you started taking tickets again after 1936? A. I believe it was that same year, later on. It was a very few months because the general policy, as far as I could tell, was that everyone was taking tickets.

The Court: What was your hospital?

A. Portland Sanitarium, sir.

Mr. Jaureguy:

Q. You think all the doctors of Portland Sanitarium take tickets, as far as you know? A. As far as I know, most of them do, sir.

Q. And have been for some time? A. Yes.

Mr. Jaureguy: That will be all.

Recross Examination

By Mr. Marcus:

Q. Do you do any considerable amount of work for these hospital associations? A. Not very much, sir.

Q. I suppose that is true of some of the other members of the staff of the hospital you are connected with, or don't you know? A. I don't know.

Q. You do not know which particular doctors take tickets and which particular doctors do not take tickets? A. I have heard them discuss it, but as far as the amount, I don't know.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

(3:30 P.M.)

Mr. Jaureguy: That is all the witnesses we have here, your Honor. That is all we would have this afternoon, and we do not care to ask to have the thing continued for the purpose of two or three others that we would otherwise call, since their evidence would largely be cumulative.

The defendants wish to introduce some documentary evidence, additional documentary evidence, all of which is in court in some way or another, either in the files or exhibits that have been marked and withdrawn by the Government on stipulations or things of that kind. It would take me some few minutes to be able to outline that, and I am not sure that the Court would be interested in having me do it now in the courtroom anyway.

The Court: You will be ready the day after tomorrow, Mr. Marcus?

Mr. Marcus: I have a few things I would like to bring up at this time, your Honor, since apparently the defendants have rested.

The Court: Is that another witness, Mr. Jaureguy?

Mr. Jaureguy: No, your Honor. I would like, your Honor, to have my matter disposed of first as to whether I should either this afternoon or some later time, offer additional exhibits.

The Court: Yes, certainly. There will be no trouble about that.

What were you saying, Mr. Marcus?

Mr. Marcus: The defendants, I understand, are to give us a statement as to the purpose for which they are putting in their various documents and then we are to file a statement of objections. If I could have that statement tomorrow, I will get in our objections Thursday and then I

would like to take not more than two days on rebuttal; but I would like to start on Monday.

The Court: No. We will finish this case this week.

Mr. Marcus: I would like to dispose of those objections, if we could go on—

The Court: You are going to.

Mr. Marcus: —Wednesday and Thursday. If we start Friday, I certainly will not be able to make my statement of objections until sometime next week.

The Court: That is all right. We are going to finish all the testimony this week, including your surrebuttal,
2617 Mr. Jaureguy, if any.

Mr. Jaureguy: Very well.

The Court: We will work Saturday, if necessary.

Mr. Marcus: Now, your Honor, I would like to ask defendants' counsel whether they will stipulate that Dr. Leo S. Lucas is associated in practice with Dr. Chuinard?

Mr. Jaureguy: Yes, I know he is, so I will stipulate he is and has been for years. He was there before Dr. Chuinard was.

Mr. Marcus: Now, your Honor, since in my opinion the effect of my cross examination of Dr. Besson with respect to complaints has been nullified by your Honor's reserving ruling and Dr. Besson leaving the chair, I don't see any necessity for holding Dr. Besson any more.

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' TESTIMONY

Mr. Marcus: I would like at this time, your Honor, to make a motion to strike all the evidence given by defendants' witnesses with respect to their experiences with these hospital associations, on the ground that the testimony is irrelevant and immaterial and not a defense to this action.

I don't know whether your Honor wants to rule on that or not.

The Court: I am just waiting, so I won't interrupt you. I wanted to be sure you were through.

Mr. Marcus: I would like to state this: When your Honor, at the opening of defendants' case, permitted the defendants to inject the issue of dirty linen in this
2618 case, I predicted that a large part of the time would be spent on that issue, and that prediction has come true.

As your Honor may recall, in the American Medical Association case, tried more than ten years ago, the defendants did everything in their power to turn their trial

into one of a trial of the group health associations. The Court in that case refused to allow them to do that, and that was upheld on appeal.

In this case, there has been in the last two weeks an attempt by the defendants to forget that they are on trial and to try the hospital associations. In that attempt, in my opinion, they failed to meet any of the issues tendered by the Government's proof.

In connection with our rebuttal, I had in mind not taking more than two days, perhaps finishing up in one. I will want to introduce certain documents and offer two, I don't think more than three witnesses. In that rebuttal, I shall probably want to elicit testimony from the witnesses contradicting many of the things we have heard in this court during the past two weeks, but I am doing it without waiving in any way my objections to the fact that, in our opinion, we are dealing with fictitious issues and that evidence of this sort is irrelevant. Thank you, your Honor.

Mr. Jaureguy: I wonder if I might ask that counsel for the Government give us the names of the witnesses
2619 the day before they resume the trial, the names of the witnesses they intend to call the first day, and then at the end of the first day that they give us the names of the witnesses, if any, that they intend to call the second day.

The Court: Do you wish to be heard on Mr. Marcus' motion?

Mr. Jaureguy: Only that I repeat what I said several times, your Honor. That evidence was introduced on two theories. One, it is for the purpose of showing the reasons why the doctors have not taken tickets, and when it shows that they have not taken tickets for other reasons than the conspiracy, the alleged conspiracy, it also negatives the existence of an alleged conspiracy. The second is that the doctors in Oregon have the right, whether or not they exercise it is another question—

The Court: The motion is denied. We will adjourn until—

Mr. Jaureguy: Your Honor, can I dictate to the reporter the additional documents that I am offering?

The Court: Yes. We will adjourn until Thursday morning at 10:00 o'clock.

(Thereupon at 3:40 o'clock P.M. an adjournment was taken until 10:00 o'clock A.M., Thursday, February 9, 1950.)

2620 (Thereupon, after adjournment, the following offer was made on behalf of Defendants:)

Mr. Jaureguy: The defendants offer in evidence Plaintiff's Pre-Trial Exhibits 527, 564, 591 and 1187; also offer in evidence the returns on subpoenas and subpoenas duces tecum issued by the Government, contained in two bundles in the files of the Clerk of this Court.

Defendants also offer in evidence all those portions of the pre-trial stipulation of facts not heretofore offered in evidence by the plaintiff.

Defendants also offer in evidence all those answers to interrogatories heretofore filed by defendants which have not been offered in evidence by plaintiff.

That is all.

Mr. Marcus: The Government reserves the right to object to the introduction of any of the documents offered by the defendants at this time, until such time as the defendants have submitted a list, stating the purpose for which these documents are offered, it being the Government's intention, pursuant to the direction of the Court, to file objections with respect to the documents offered by the defendants, after defendants have submitted such
2621 list.

Court reconvened at 2:00 o'clock P.M., Friday, February 9, 1950.

Mr. Jaureguy: If your Honor please, this morning there were handed to me about 200 exhibits which the Government is going to offer or says that they are going to offer.

I would say that I cannot see, under any possible stretch of the imagination, where over 10 per cent of them can possibly be called rebuttal. If they are going to be admitted in evidence, it means that Mr. Coughlin and I are going to have to carefully study them to see what we may have to bring in to answer them. Among others that might conceivably be called rebuttal, some of them are hearsay; for instance, a letter written day before yesterday by somebody at Oregon City to National, telling National what a fine organization it is; a letter written last month to the United States Attorney telling him about what scoundrels certain of the doctors in Medford are, which your Honor has already ruled cannot get into the case;

correspondence between industrial concerns down at Westport and the National Hospital Association, which they tried to get in and which your Honor told them was not admissible; and many others of like tenor.

I am not now arguing their admissibility particularly, but I am saying that if we have to call witnesses as to some of them it is going to be quite a chore for us.

2622 I am wondering if there could not be some ruling by your Honor at some early time as to whether they are admissible or not, so that we would know how to proceed.

Mr. Marcus: Your Honor, I want to say two things. In the first place, I saw Mr. Jaureguy myself after completion of the last day Mr. Jaureguy had his witnesses here, a. I told him that we were turning over to the Court Reporter documents to be pre-trial marked and that they would be available to him the next day. That was yesterday.

Mr. Jaureguy made no attempt to see those documents yesterday. He came in this morning and we turned them over. That is the first thing.

The second thing is this: Every one of these documents goes to impeach testimony that we have heard these past few weeks, and I would suggest that Mr. Jaureguy follow the same procedure we have been following, and that is that we will make a statement in writing as to the purpose for which these exhibits are being offered and he will file a statement of his objections.

Mr. Jaureguy has filed a statement—that is, he has served a statement on us, served a statement on us yesterday, with respect to his documents, and I expect by Monday to furnish the Court and Mr. Jaureguy with a statement of our objections together with a statement of the purposes for which these documents are offered.

The Court: I can read them tonight. I might

2623 just as well read them tonight as any time, if they are available.

Mr. Jaureguy: It took me two hours to get over half of them, but maybe I am not a fast reader.

The Court: You probably are not. I will read them tonight.

Mr. Marcus: Well, your Honor, I was going to offer these documents now. I would like to make the offer.

The Court: Make the offer.

Mr. Marcus: We are offering in evidence Exhibits 2044 to 2225.

Did you want to make a statement?

Mr. Jaureguy: Not unless you are going to argue the admissibility of them.

Mr. Marcus: No.

Mr. Jaureguy: As to the following we have no objection: 2046, 2047, 2048; 2055, 2056; 2060, 2061; 2108 and 2109. We haven't had an opportunity to examine the documents beyond 2139.

Mr. Marcus: That I absolutely deny. As I stated to your Honor, they could have had the documents yesterday. They made no attempt to get them.

Mr. Jaureguy: I will just say this: I got them this morning and I haven't, since then, had a chance to examine them.

I will say this, also—and I think that there was a misunderstanding—yesterday Mr. Cohen told me that these had been handed to the Reporter for marking and that he had marked some of them and that I could have them any time.

2624 Then we talked about other things, other documents and, finally, when we got through I told him I was sending up my offer of documents and that I wished he would hand to whomever I sent up these exhibits that we have been talking about, and when they did not come I just assumed that they were not available for me.

I want to say, however, I think he undoubtedly thought I had in mind some other exhibits, defendants' exhibits, so I am not blaming him. I am just explaining why I did not get the exhibits yesterday.

Mr. Cohen: Your Honor, I called Mr. Jaureguy to inform him that these documents were available and also some of his exhibits which he had given us for photostating purposes, and they would also be returned. I called his attention to the minutes which he had turned over to us, that they were also available for return and he stated, "When I send up my purposes for which I am offering my exhibits will you deliver them to the same girl?" And I told him I would. No mention was made of giving these particular documents to the party who delivered or served his documents.

The Court: Call a witness.

Mr. Marcus: There are a couple of more things, your Honor. I want the record to show that a check with the Clerk of this Court and the Marshal shows that no subpoenas were issued for the defendants' witnesses.

Mr. Jaureguy: If I said defendants I meant the subpoenas issued by the plaintiff, and the returns on
2625 the subpoenas.

Mr. Marcus: Let us not confuse the issues. My statement stands.

Mr. Jaureguy: Oh, well, that is all right. I thought you were referring to my offer of evidence.

Mr. Marcus: No. Your Honor, defendants' counsel is willing to stipulate that Dr. Fox whose name was mentioned by Mr. Foley, at the time of his application and admission to the local medical society, was not connected with Northern Permanente.

Now, your Honor, one more, and that is this—

Mr. Jaureguy: I am stipulating to that statement there that you showed me, and that is he was admitted to the medical society in 1941.

Mr. Marcus: This statement is not limited to that.

Mr. Jaureguy: That is all right. That is what I am stipulating to. I do object to the admissibility of the last part where it tells about Dr. Fox—

Mr. Marcus: All I want to know, Mr. Jaureguy, is: are you willing to stipulate he was not with Permanente at the time?

Mr. Jaureguy: I am stipulating to that statement there, excepting the one at the bottom of that page.

Mr. Marcus: All right. I will cross out this statement and leave the rest in, and have it marked as an exhibit. May I have this marked?

(Statement in re Dr. Fox as a member of Multno-
2626 mah County Medical Society was thereupon received in evidence and marked Plaintiff's Exhibit No. 2226.)

Mr. Marcus: Exhibit 2226 is the document that we have just referred to.

Your Honor, when Dr. Klingler was on the stand he made mention that about the same time that he was called before a group of medical society doctors that Dr. Newsome was also called, and he stated that to the best of his knowledge neither he nor Dr. Newsome were ever notified that they were admitted to the Medical Society.

Mr. Foley the other day stated that Dr. Newsome had been admitted to the Society. I tried to find where Dr. Newsome was located and finally ascertained he was in Japan. I thought it important enough to make a telephone call to him last evening, and this is what he told me:—I

am merely making this statement to lead up, if necessary, to a request to serve written interrogatories.

He told me that in 1945 he was working for Drs. Phillips and Staats; that in December of that year he made application to the Medical Society; in October of 1946 he was summoned before a group of Medical Society doctors, at which time they asked him a number of questions, many of which related to his association with Drs. Phillips and Staats; and after the meeting he talked with one of the persons who was at that meeting and that person
2627 told him that he could not be admitted as long as he was associated with Drs. Phillips and Staats; thereafter, he severed his connection with Drs. Phillips and Staats and went to California.

He stated to me that he was never notified he had been admitted to the Medical Society. He also stated he was willing to have his deposition taken.

I do not want to mislead your Honor at all as to what we know about this matter, so I am going further.

As you may recall, your Honor, upon directions of your Honor defendants turned over to us data they had with respect to their membership, that we put in evidence. Those records did not contain any reference to Dr. Newsome.

I could stop there, but I am not going to. I think I have a duty to the Court to reveal whatever else we have been able to find out. We put into evidence a document which we had procured from the American Medical Association and which these defendants have talked about. That document contains a list of doctors that the Oregon State Medical Society regularly sends to the AMA to keep the AMA informed as to their membership.

That does show that in February, 1947, the February, 1947, report made by the Oregon State Medical Society states that Dr. Newsome was reinstated, but that he had removed to California.

If there is any question as to what I have said, I
2628 will ask the Court for written interrogatories to be served on Dr. Newsome.

Mr. Jaureguy: All I know is what I have heard from the witness stand. That is all I can say.

Mr. Marcus: Well, then, I will have to ask permission of your Honor to serve interrogatories on Dr. Newsome.

The Court: What do the Rules say? Is there any time beyond which they may not be served?

Mr. Marcus: I do not know of any restriction, your Honor.

The Court: Unless the Rules prescribe a time limit, then, you may serve them. Is it conceivable they must be served before trial? I do not have it in mind, do not have the rule in mind.

Mr. Marcus: I don't believe there is any restriction. I just don't know. Especially in a case of this sort, where the question has come up upon the defendants' case—

The Court: Whatever the Rules say I will abide by.

Mr. Jaureguy: I want the record to show in the event it is a matter of discretion we wish to object to it on the ground we do not care to have testimony after both sides have rested.

Mr. Marcus: This is in rebuttal. This would be in rebuttal. There is no question of resting as far as rebuttal is concerned.

Mr. Jaureguy: I didn't know that.

Mr. Marcus: The other day, your Honor, Mr. Jaureguy read a part of the deposition taken of Mr. Bechtold as an adverse party on behalf of defendants. That
2629 deposition was taken on May 19, 1949. My point is this: Mr. Bechtold made certain corrections in his testimony. I would like to ask Mr. Jaureguy whether he knows whether what he read had been corrected.

Mr. Jaureguy: Yes. Corrections had been made in the deposition. I assume that those are the corrections made by Mr. Bechtold, because the corrections made were made by the Reporter.

2630 Mr. Marcus: Well, we had received from the reporter a supplemental set of papers containing those corrections, and that is why I—

Mr. Jaureguy: I can say further that the reporter, as I understand it, copied the questions and answers from the copy of the deposition which he has in his possession. Whether it is the original of the deposition I do not know.

Mr. Marcus: That can be checked. Anyway, I want to offer other parts of the deposition, but rather than read them I would rather give them to the reporter and have him copy them into the record.

Mr. Jaureguy: Is this the entire balance of the deposition?

Mr. Marcus: No.

Mr. Jaureguy: Then I would like to have a chance to see what he is offering to copy into the day's transcript.

Mr. Marcus: One thing further. I would like the record

to show that Exhibits 2104 and 2105 which are being offered by the Government were not among any of the exhibits or documents turned over to us by the defendants. They come from the files of the American Medical Association.

Mr. Jaureguy: I neither agree no disagree, because I don't know.

Mr. Marcus: Mr. Brunkow.

(See Page 2681 for parts of deposition of C. C. Bechtold referred to above by Mr. Marcus.)

2631 RAY BRUNKOW, a witness on behalf of Plaintiff, was recalled to the stand as a rebuttal witness, and, having been previously duly sworn, was examined and testified as follows:

Direct Examination On Rebuttal

By Mr. Marcus:

Q. Mr. Brunkow, you were here before, were you not? A. Yes, sir.

Q. And you are the General Manager of the Industrial Hospital Association? A. I am.

Q. Now, Mr. Brunkow, during the past few weeks some of the defendants' witnesses have testified with respect to X-rays. They have suggested that they have had to send in X-rays to the hospital associations and there they have remained. Now, could you tell us what you know about that matter? A. The Industrial Hospital Association pays for X-rays upon receipt of the X-rays, and routinely returns them to the doctor who requests that they so be returned.

Q. Now, Mr. Brunkow, has it come to your attention that some doctors dealing with Industrial Hospital Association deal with it in a manner so as to conceal the fact that they are dealing with the Industrial Hospital Association?

Mr. Jaureguy: I object to that as not proper rebuttal.

The Court: Answer.

A. Yes.

2632 Mr. Marcus:

Q. Now, Mr. Brunkow, we have heard in the past few weeks comments from one or more doctors with respect

to brokering services of doctors. Now, Mr. Brunkow, has it been your experience that doctors who cooperate with the Association furnish leads to new accounts? A. Yes, it has. We have received numerous leads from doctors who cooperate with us and have followed up those leads and have been successful in gaining the contract.

Q. Mr. Brunkow, we have heard here in the past few weeks statements from a number of doctors that, if there was anything wrong in the by-gone days, everything is all right now, and that there isn't any boycott against these hospital associations. Have you since the commencement of this action experienced difficulty in getting new accounts because of the opposition of doctors?

Mr. Jaureguy: Object to that as a conclusion of the witness and not proper rebuttal.

The Court: He may answer.

A. Yes, we have. We experienced that just several weeks ago.

Mr. Marcus:

Q. Would you go on? A. We learned that a large mill was being constructed in the southwestern part of the state. Our solicitor or salesmen—we call all of our men who solicit business salesmen, field representatives—went down into that area with the instructions that he advise this firm

2633 that the Industrial Hospital Association would equip a first-aid station if it were the management's desire that a first-aid station be established in the plant; that the Industrial would participate with his occupational carrier in bearing a portion of that nurse's expense; further that we would put in $1000 cash fund in this employer's office and guarantee to pay all bills, whether itemized or not, for any covered condition; and it was with that approach that we attempted to sign this contract. The employer—

Mr. Jaureguy: Object to that as hearsay.

The Court: Continue.

A. The salesman reported that the employer had advised him that that was the most generous offer that he had seen, that he was familiar with the Industrial Hospital Association's contracts, that he was aware of the Association's financial stability, but that until such time as the doctors in that community would take our tickets he was sorry but he was unable to sign with our contract.

Mr. Marcus:

Q. Now, Mr. Brunkow, have you had during the period you have been with the company, have you had any experience with respect to the telephone exchange which indicates that this boycott is still going on?

Mr. Jaureguy: Object to that as not proper rebuttal.
The Court: Answer.

A. Yes, I have. Our business office buys the services of one of the two doctors and nurses exchanges and calls
2634 after the business hour are transferred directly to this exchange, and on numerous occasions I have had the telephone operator call me at home and state that one of our subscribers had called, they had received the call, and had requested that a doctor be sent out and she had had difficulty in getting a doctor to go out the minute she told them the subscriber was covered by the Industrial Hospital Association; and at that point then we advised her just that we would pay that subscriber our fee for a night call, $7.50, irrespective of who he got.

Mr. Marcus:

Q. Now, Mr. Brunkow, one of the defendants' witnesses suggested that OPS, unlike the commercial hospital associations, have been willing to take classes of persons which the hospital associations would not. Could you comment on that? A. Well, the Industrial Hospital Association has among its subscribers government employees, hairdressers, schoolteachers, preachers, restaurant owners, operators. I know of no class or race or creed that we have denied our membership to. We were in our inception established to provide this type of medical service plan to low wage industrial workers, but as the need became apparent through other classes our coverage was broadened and our area of operation was broadened.

Q. Now, Mr. Brunkow, has the Industrial Hospital Association considered that its employees are under the
2635 Fair Labor Standards Act?

Mr. Jaureguy: Object to that as incompetent, irrelevant and immaterial and not proper rebuttal.
The Court: Answer.

A. Without ever having taken this up with our attorneys we have felt that we were under the Wage-Hours Act and have included all our hourly employees, those in Oregon and

those in Washington, on the hourly basis, as has come to us as being, meeting the requirement of the Wage-Hour Act.

Mr. Marcus: That is all.

Cross Examination On Rebuttal

By Mr. Jaureguy:

Q. Now, you say originally the Industrial took on only the industrial establishments. When did they start taking on the teachers and hairdressers and so on? A. At the time I came to work for the organization we had a lot of those already.

Q. I have forgotten when you started with the organization. A. 1944.

Q. 1944? A. That is right.

Q. So in that respect you were only talking about '44 and since then, what you found in '44 and since then? A. That is right. Mr. Kirk told me that we were established at the outset in 1923 primarily in the lumbering busi-
2636 ness, and I testify from my own knowledge what happened since that time.

Q. Since 1944. Are these hairdressers and schoolteachers and so on on individual contracts or on group contracts? A. They are intermingled between groups as well as individuals.

Q. Now, in certain types of cases there is an advantage to Industrial, is there not, the Industrial Hospital Association, to have the doctor render his statement direct to his patient? A. In certain types of cases?

Q. Yes. A. I don't know exactly what you mean by that.

Q. Well, you have suggested to doctors that you prefer they not bill you direct—

Mr. Marcus: Your Honor, I object to that as not within the scope of the direct examination at all.

The Court: He may answer.

A. There are certain instances where doctors in the practice of their medicine treat conditions and cases which are not covered by our insurance or by our program, and it becomes very cumbersome to a doctor's office to render a statement to the hospital association covering everything he did, and it is in that instance desirable that he look to his patient for it does not burden his office with bookkeping or ours and we make our settlement to our subscriber on the basis of what his insurance has bought for him.

Mr. Jaureguy:

Q. Now, you are talking of both the doctor and
2637 the Industrial Hospital Association, but I mean from the standpoint of the Industrial Hospital Association. There are types of cases or types of doctor services that are covered by you, or partially covered by you, where you prefer that the doctor render his statement to the patient and the patient get reimbursement from you? A. Yes. I can recall one instance of that sort.

Q. One recent instance, you mean? A. Only one instance.

Q. But do you mean that aside from that one instance that there aren't many cases where there are advantages in having the bill rendered to the patient? A. Oh, from the patients or the doctor or our standpoint?

Q. From your standpoint. A. From our standpoint I would rather see bills submitted directly to our office for—instead of having 100 statements come in from one doctor covering a hundred subscribers and then our having to process a hundred different claims and sending out a hundred different checks, who in turn we assume go to that doctor. We would rather have that doctor submit his statement to us.

Q. Well, that doesn't quite get the problem. What I say is—

Mr. Marcus: It certainly does.

Mr. Jaureguy: Could I proceed, please, Mr. Marcus?

Mr. Marcus: Proceed.

2638 Mr. Jaureguy:

Q. What I was asking was not what you prefer. I asked you whether there were any advantages in having the bill rendered the patient. You have told me the disadvantage. Now I am asking for the advantages. A. The advantage of having the bill go to the patient?

Q. Yes. A. I don't recall of any of those.

Q. Suppose you feel a doctor is padding his bills? A. We have no way to determine whether he is padding or not.

Q. Don't you think that having him render the bill to the patient would be a check on that, tend to check it, stop it? A. It is conceivable it might.

Q. In other words, if the doctor put down in his bill that there were four house calls and there were only two, the patient would probably call it to your attention, or his? A. I would like to think so.

Q. What is that? A. I would like to think so.

Q. Well, yes. And you don't think that the padding then is of sufficient evil so that there is any advantage from that standpint of having the doctor render his bills to the patient? A. Well, I don't know how much padding goes on so I can't answer that. I have no way of knowing.

Q. Then, don't you think that the patient is more appreciative of the extent of his coverage if he gets the bill
2639 and can actually see it and then sends it on to you? A. That is true if he had not been brought up on this acceptance of the ticket by the doctor.

Q. So that you think to the members who have been under your coverage for years, dating back to the time when your coverage entitled him to service rather than to indemnity; but if he is a recent one that goes under it you think that that would be an advantage, I mean having the bill rendered to him instead of to you would be an advantage if he was a recent patient? A. From an advertising standpoint.

Q. Yes. A. If we could offset that advertising by cutting down our expense in the office from having to hire this large number of people to handle these, why, that would be highly desirable.

Q. So that there are advantages as well as disadvantages to having the bill rendered to the patient instead of to the Industrial Hospital Association? A. Now, if our subscribers would feel that way we would have a happy solution.

Q. Well, your subscribers who have been under you for a long time, and as they put it, don't like to handle the red tape and feel that they have a service agreement instead of an indemnity agreement, they don't like to go to the bother; but, the new ones that haven't been under you a long time, they might feel it some advantage, don't
2640 you think, to be able to see just what they are getting for their premium? A. Well, this morning I had to establish another petty cash fund just to combat what you are putting forth. We signed up an account the first of the month, and this month we had to put up a petty cash fund, for already they are in a turmoil, so we have put this fund there; so, there is a recent account we have had two weeks.

Q. Well, I am asking one question and you are answering an entirely different one. I am asking you about these advantages and you answer the disadvantages. But you do recognize those two advantages at least to the Industrial Hospital Association—maybe you don't emphasize them as

much as I would like you to, but, nevertheless, you recognize them. In the first place it is a check on padding. A. Now, that is not—I want to clear that, because padding is dynamite and I don't know whether a bill is padded or not and I am in no position to enter into any discussion on padding.

Q. No. I am not asking you to vilify the doctors. I am saying that if there is padding going on this would be a check on it. I think you will recognize that. And the second is that it makes the patient more appreciative of the extent of his protection, the value of your contract. Now, you would recognize that those are advantages? A. That is right.

Q. Yes. Now, I want to read you a letter dated
2641 April 24, 1939—of course, that is before you were there—from your company to Dr. Straumfjord and Boyden as part of Exhibit 2694 as to the case of a named patient:

"We pay for this operation on the basis of our fee schedule, and while this particular operation may have been more difficult than some others it has not seemed practical to us to attempt to pay a higher fee for the more difficult cases and a lesser fee for the less difficult cases but strike an average fee and allow the same fee for the easy ones as for the hard ones."

Is that still the practice of the Industrial Hospital Association? A. I don't know, for I have never had anything to do with the establishing of a fee schedule.

Q. But, aside from that, is it the practice of the Industrial Hospital Association to stick to their fee schedules? A. No, it isn't.

Q. It is not? A. No.

Q. So they have changed their practices, then? A. I have never established a fee schedule, but we do consistently go beyond a fee schedule when that doctor writes to our Medical Director and points out the facts.

Q. When what? A. When that doctor writes to our Medical Director and points out the extenuating cir-
2642 cumstances.

Q. That is, a hard case with a lot of work, is that what you mean? A. That is right.

Q. And do you know when that policy of the Industrial Hospital Association in that regard was changed? A. No.

Q. Has that been the policy since you have been there in 1944? A. Yes.

Mr. Marcus: Pardon me a minute, but I think the witness nodded No to one question and I wonder whether the reporter got that.

Mr. Jaureguy: I don't think there is any noise when he nods.

Mr. Marcus: That is right, but I want it shown he did say No.

Mr. Jaureguy: Do you mean when I asked him if that was still the policy did he shake his head and say No?

Mr. Marcus: No. I will ask the reporter to read back.

The Court: You gentlemen straighten that out during the recess.

Mr. Jaureguy:

Q. Now, I want to read to you from Defendants' Exhibit 2737, which is a letter from you to Mr. Troyer N. Thompson of the Astorian-Budget. You probably remember the letter from Thompson to you that the Government put in evidence. This one you may recall was attached right to it when
2643 you handed the documents to the Government. A. That is right.

Q. The second paragraph, "It is a funny thing, but in recent years this whole boycott business has apparently began to fall apart because of its own weight."

What did you mean by that? A. I think I meant that.

Q. You meant by that that in recent years the doctors have been cooperating with the Industrial Hospital Association much more than before that? A. We have found that individual doctors have begun to look to us for payment of their bills.

Q. Yes. A. And they had not written us any letters, had not advised us of anything, they merely sent in a bill.

Q. In other words— A. It happened sufficiently often that we were justified in pointing that out to Mr. Thompson, or whatever his name is.

Q. So that up to September 4, 1948, and for the recent years prior to that, the trend had been in favor of doctors cooperating with the Industrial Hospital Association, is that correct? A. The trend has been where men such as Dr. Pitman, who you recall testified the other day, had individually began to correspond with us, whereas they had not immediately preceding that.

2644 Q. And do I understand that that trend has now been reversed since September, 1948? I understood on direct examination you said that since this trial started that the trend has started the other way.

Mr. Marcus: That isn't what he said. Let him continue.

A. The trend has continued in the direction of cooperation.

Mr. Jaureguy:

Q. Cooperation? A. The trend which had preceded the inception of this trial has continued.

Q. Well, could you tell us how many years it has been since there has been a trend in favor of cooperation or in the direction of cooperation with Industrial Hospital Association? A. I don't know that.

Q. Has the trend been in the direction of cooperation ever since you have been there in 1944? A. I can't say what it was prior to that, so I don't—

Q. I mean since then. A.—so I don't know when the trend started or what would have been a trend.

Q. Well, has the trend been in the direction of more and more cooperation by doctors with Industrial Hospital Associaton since you have been there in 1944? A. You recall that I was out in the field for several years before coming inside and then after I came inside I was on claims for quite some time.

2645 Q. You were on what? A. I was on claims, handling the claims desk.

Q. That is since 1944? A. Since 1944. That is right. And we have enjoyed a degree of cooperation from these individual doctors.

Q. And that has been an increased degree of cooperation? A. Yes.

Q. Ever since 1944? A. I can't say. I can say as to what it was when I went in in 1946.

Q. Oh, I thought 1944 A. No. '44 I was out in the field.

Q. I see. So since 1946 there has been ever increasing cooperation on the part of the doctors with Industrial Hospital Association? A. Relative to what it was when I went in.

Q. Yes. Then you go on to say—well, of course, this letter was written September, 1948, and you say "In recent years this whole boycott business has apparently begun to fall apart because of its own weight."

How many years did you have in mind when you said "recent years", just mean '46, '47, '48? A. Two years.

Q. "This past year we made a survey and found where we had made direct payments to over 1200 doctors and dentists, and the last several months we notice so

2646 so many new names in our remittances that we made another survey and were pleased in learning that